Proceedings of the Council

OF THE

LIEUT.-GOVERNOR OF BENGAL

FOR THE PURPOSE OF

MAKING LAWS AND REGULATIONS.

Vol. XIII - 1881

Published by Authority of the Council

Calcutta
PRINTED AT THE BENGAL SECRETARIAT PRESS

1882.

INDEX TO THE PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR

Making Laws and Regulations

FOR THE YEAR 1881.

B. S. Press—847G—30—10-3-1905—G. M.

PROCEEDINGS

OF THE

COUNCIL OF THE LIEUT.-GOVERNOR OF BENGAL

FOR THE

Purpose of making Laws and Regulations.

Saturday, the 19th February 1881.

Present:

His Honor the Lieutenant-Governor of Bengal, *Presiding.*
The Hon'ble G. C. Paul, C.I.E., *Advocate-General.*
The Hon'ble H. L. Dampier,
The Hon'ble H. J. Reynolds,
The Hon'ble H. A. Cockerell,
The Hon'ble A. Mackenzie,
The Hon'ble T. T. Allen,
The Hon'ble Peary Mohun Mookerjee,
The Hon'ble F. Prestage,
The Hon'ble Kristodas Pal, Rai Bahadoor, C.I.E.,
The Hon'ble T. W. Brookes,
and
The Hon'ble Ameer Ali.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT, 1880.

The Hon'ble the Advocate-General, in moving for leave to introduce a Bill to amend "The Calcutta Port Improvement Act Amendment Act, 1880," said that Act IV of 1880 empowered the Port Commissioners to borrow money by the issue of debentures under the provisions of sections 9 and 16, subject to certain conditions which were imposed by sections 17, 18, and 19 of the Act. These conditions were that, if interest upon any loan was not paid according to the conditions of the loan, the Lieutenant-Governor might of his own motion, and should on the application of lenders holding not less than one-third in value of the total of the loan in respect of the payment of interest on which default had been committed, attach the tolls, duties, rates, fund or property on the security of which the loan was made, and appoint a receiver. The section further provided that no default in payment of interest should render the loan repayable. Sections 18 and 19 worked out that procedure, section 19

giving the Lieutenant-Governor certain power over the accounts to be kept in case of attachment. This was considered by the Council, he presumed, an inexpensive and expeditious method of recovering in case of default in the payment of interest, and it was thought that the facilities thus offered would be readily accepted. But advertisements having been issued under section 9 of the Act, calling for loans, the Port Commissioners represented to the Government that they were unable to raise loans in the open market under the restrictions imposed under section 17 of the Act. Upon that matter being represented to Government, together with two or three minor matters which he should presently notice, it was deemed advisable to remove the restrictions imposed by the Act in the way of effecting loans, and to give persons lending money the full benefit of any independent action which any debenture-holder might be entitled to under the law. He believed it was not the intention of the Government or of the Legislature in any way to reduce the security on which money was to be advanced, but it was thought that the simple and inexpensive method of obtaining payment in case of default, which was provided under sections 17 to 19—a method which, it was hoped, in the flourishing state of the Port Commissioners, would never come into operation—would give to the debenture-holders sufficient security. However, as a matter of fact, objections were taken, and it was immediately conceded by the Government that those restrictions should be removed. This was one of the purposes for which he moved for leave to introduce this Bill. In the Bill he proposed to repeal sections 17, 18, and 19 of the Act, and then in sections 7 and 8 to introduce a few words to make the subject-matter of the previous sections clear, and to substitute amended sections for them. Then in order to remove the other difficulty that no default of payment of interest should render the loan repayable, it was provided in the form of debentures to be issued that if default be made for two consecutive half-years, either in the payment of interest, or in making the necessary investments on account of the Sinking Fund, the loan should become repayable; and in order to remove any difficulty as regards the question of registration, he had drawn a form of debenture which he thought would be entirely free from any such objection. The difficulties having been removed, he had every confidence that the loan would be immediately subscribed for. Opportunity had also been taken to raise the maximum number of the Commissioners to 13, to enable the Lieutenant-Governor to add a Commissioner to represent the growing interests of Howrah. A section had been added for that purpose. Further, opportunity had been taken to empower the Lieutenant-Governor to make bye-laws regulating the hours of employment of European seamen on board ships lying in the port in work necessitating exposure to the sun. The subject had attracted considerable public attention, and it was not necessary to enlarge upon it. But it was clear to every one who had thought on the subject that exposure to the sun in the very hot months was detrimental to the health and injurious to the lives of seamen and others employed on board vessels in Calcutta. It was known to the Council that, however hard

The Advocate-General.

and injurious the work might be, it was lawful for the master of a vessel to order any member of his crew to do work which exposed him to the sun in the hot months, and disobedience to such order was punishable very severely. It was thought necessary to protect persons so situated, and to give persons employed in vessels lying in the port special protection of a law reasonably limiting the hours of employment. The Port Commissioners had made a recommendation to that effect, and the subject had been referred for the opinion of the Chamber of Commerce. Their answer had not yet been received; but he had no doubt it would affirm the recommendation of the Port Commissioners.

The motion was agreed to.

On the application of the ADVOCATE-GENERAL, the Rules were suspended and the Bill was read in Council and referred to a Select Committee consisting of the Hon'ble Mr. Mackenzie, the Hon'ble Mr. Prestage, and the mover, with instructions to report at the next meeting of the Council.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend "The Court of Wards Act, 1879." He said, the reason for the introduction of this Bill was a question relating to pensions. Under the impression that the law allowed it, small pensions had hitherto been paid out of the Wards' Fund to persons employed under the Court of Wards, and no objection had been raised. But the question had now arisen in connection with a gentleman of distinguished abilities, who had done great service to the public, besides those which he had rendered to the Court of Wards. It was now considered right to give him a pension in recognition of his services. MR. DAMPIER believed that the Government proposed to give from the General Revenues such part of the pension as would represent this gentleman's services to the public at large, and it was right that the part which represented his services to the Court of Wards should be derived from the funds of the Court of Wards. But the Government of India was now advised that the wording of the existing law did not admit of pensions being charged against the Court of Wards Funds. The original object of the Bill was to remedy this defect.

Then, as his hon'ble and learned friend had just said, the opportunity was taken to amend the law in other points. Some of these were important points, relating to the protection of wards' estates from sale for arrears of revenue. There was a section of the Sale Law, Act XI of 1859, section 17, which protected these estates from sale. The existence of that section was obviously overlooked when the Wards Act of 1870 was passed, and again when the existing Act of 1879, which followed the Act of 1870, was enacted. What was meant to be a corresponding provision was then enacted. But unfortunately the corresponding section did not correspond. The Bill was not yet ready, but with it would be circulated some papers which would show hon'ble members the difference between the two Acts. It was now obviously necessary to amend the law. The provision in the Act of 1859 would be repealed, and the existing law would be so amended as to embody what the Council might consider to be a proper provision on the subject.

The next point was that, under the provision of section 17 of Act XI of 1859, which it would be proposed to the Council to re-enact, the estates of wards were protected from sale for arrears of revenue accruing due while such estates were under the Court of Wards; that is to say, if an arrear accrued a day before a ward attained his majority—if there happened to be an arrear outstanding on the day on which charge of the property was given up by the Court—it could not be recovered by sale of the estate on which the arrear was due. That was well enough, but unfortunately no other means were provided for realizing the arrears. Obviously, provision should be made for the recovery of such arrears in some way. It was proposed to provide that, when an arrear was due at the time when a ward's property was released from the charge of the Court of Wards, the Collector might recover the arrear by attachment of the estate in the same manner as he was allowed to do in respect of an arrear of revenue accruing due from the inherited estate of a minor which had not been taken under charge of the Court of Wards.

The third point in connection with this protection to wards' estates was this: At present an estate could not be sold for arrears of revenue while under the charge of the Court of Wards. MR. DAMPIER was able to show hon'ble members of Council, from the papers which would be circulated with the Bill, that it was sometimes absolutely necessary, in the interests of the ward himself, that an estate should be so sold. When an estate was so deteriorated that it could not pay the revenue for which it was liable, any private zemindar would, as a matter of course, relieve himself of the liability to pay the revenue by letting the estate go to sale; but the law did not admit of a ward's estate being got rid of in this way. The answer which suggested itself at first sight was—"so much the better for the ward; the manager has only got to leave the revenue unpaid; the Government cannot sell the estate." But it was not so. Unfortunately for the ward, there was another section of the law which required that all funds which came into the hands of the manager of a ward's estate must be applied *in the first instance* to the payment of revenue as long as any arrear was outstanding, so that, if any one particular estate belonging to a ward could not pay its own revenue demand, the manager was bound to make up the deficiency from the other funds in his hands. It was proposed therefore to modify the section, which absolutely prohibited the sale of an estate for arrears of revenue, guarding the modification strictly by the condition that no estate would be sold unless the Board of Revenue should be thoroughly satisfied in each case that it was for the interest of the ward that the estate should be sold.

There were no other provisions in the Bill which MR. DAMPIER thought of sufficient importance to bring to the notice of the Council at this stage.

The motion was agreed to.

AMENDMENT OF THE CESS ACT, 1880.

THE HON'BLE MR. DAMPIER moved for leave to introduce a Bill to amend "The Cess Act, 1880," and in doing so he said that his remarks would

consist in reading to the Council the Statement of Objects and Reasons which accompanied the Bill, and which was as follows:—

"The object of this Bill is to correct certain errors which are found to have crept into the edition of the Bill to repeal the previous Cess Acts, which was ultimately passed by this Council and assented to by the Governor-General, and so became law as Act IX of 1880.

The opportunity is taken to make one or two amendments in the Act, which the working of it has shown to be desirable."

He would, however, add, by way of personal explanation, that the Bill into which the errors had crept was not the Bill which was passed by the Council when he was in charge of it. That Bill did not contain these errors, which he might state were first brought to light in a circular issued by the Board of Revenue. He did not know how the errors crept in when the second Bill was introduced and passed in consequence of the Viceroy having withheld his assent to the Bill which was originally passed.

The motion was agreed to.

AMENDMENT OF THE CALCUTTA MUNICIPAL ACT, 1876.

THE HON'BLE KRISTODAS PAL moved for leave to introduce a Bill to amend the Calcutta Municipal Consolidation Act, 1876, and in doing so he said he had been invited to take charge of the Bill, and he did so with pleasure. He should state at the outset that there was no intention whatever to touch the Municipal Constitution. The Lieutenant-Governor, he was permitted to say, was quite willing to give a full and fair trial to the present system of municipal government in Calcutta. The object of the Bill was partly to give legal effect to the loan arrangements lately entered into between the Government of India and the Calcutta Municipality; also to provide for the repayment of municipal loans which might be advanced by the public by extending the term of repayment from 30 to 60 years, or reducing the contribution to the Sinking Fund from 2 to 1 per cent.; to extend the power of the Corporation with regard to the reclamation of bustees; and to make such other amendments in the provisions of the existing law as had suggested themselves by practical experience. With regard to the first point, he might mention that the Corporation of Calcutta owed to the Government a debt of Rs. 78,81,000. These loans were raised at different rates, namely 4, 4½, and 5 per cent. It was proposed that, if these loans were consolidated, and 60 half-yearly payments of interest and Sinking Fund were made at the rate of 4¼ per cent., the Municipality might be able to save a considerable amount of money in the way of annual contribution to the Sinking Fund, provided that they would agree to make over to the Government the accumulations of the Sinking Fund up to the date of such arrangement. The Municipality accepted the proposal of the Government, and it had since been carried out. The arrangements made were thus summarised in the last administration report of the Commissioners:—

"The Government of India is prepared to close the transaction if the Municipality will surrender its present Sinking Funds, and agree to discharge the rest of the debt by 60 equal half-yearly payments of principal and interest, calculated at 4¼ per cent. It seems probable that neither the Government nor the Municipality would either lose or gain by this

arrangement, and that it would be convenient for the Municipality, whose yearly payments would be reduced from Rs. 5,94,378 to about Rs. 4,67,290, or by Rs. 1,27,089."

By this arrangement the Municipality had been able to save about Rs. 1,25,000 per annum, which was equal to about 1 per centum of the house-rate, and he desired to acknowledge, on behalf of the Corporation, the substantial concession which the Government had made. The next important point was to reduce the contribution to the Sinking Fund from 2 to 1 per centum on loans raised from the public. The principle involved in this contribution was that the present generation was practically made to bear the whole cost of improvements; it was proposed that the cost of improvements of a permanent character should be equally divided between the present generation and posterity, and with that view it was proposed to reduce the contribution to the Sinking Fund. He would also observe that, while on the one hand the concession of Government he referred to had proved beneficial, it had on the other hand placed the Municipality at some disadvantage, because the minimum interest which the Corporation had now to pay for their loans was 5 per centum, whereas the rate of interest on Government loans seldom exceeded $4\frac{1}{2}$. The main object he had in asking for the reduction of the contribution to the Sinking Fund was to help the Corporation in carrying out the doubling of the water-supply; and that object, as the Council was aware, was uppermost in the minds of the Corporation; but owing to financial difficulties and other considerations, they had not yet been able to carry it out. The most important point in the water extension scheme was the 62″ main, objection to which was raised on financial grounds; but if the contribution to the Sinking Fund were reduced as proposed, there would not, he apprehended, be any difficulty on that ground. It was not his intention, nor did he think this the place, to discuss the question of the main; but if a 62″ main was provided, it would not only meet the wants of Calcutta, but, he was told by competent men, would also suffice for a supply of water to the suburbs.

The third point in the Bill was the subject of bustee reclamation. He believed that the Government here, as well as the Home Government, were particularly anxious that active measures should be taken for the reclamation of bustees in the town. When the Municipal Act was amended in 1876, it was considered necessary to vest the Municipal Commissioners with extensive powers in this respect. There was, however, one defect which was unfortunately not remedied at that time. The procedure laid down by the Act of 1876 was as follows:—That if the Commissioners should find certain bustees or blocks of huts injurious to the health of the locality, they should serve notice on the owner, specifying the necessary improvements, and calling upon him to make them at his own expense. But should the owner neglect to do so, the Commissioners were empowered to carry out the improvements at the cost of the Municipality and recover the expenditure from him. The result would be that the owner of a bustee would be deprived of his property for the sake of improvements wholly beyond his means. When the Bill of 1876 was before the Council, Baboo Kristodas Pal had pointed out that that provision was not sufficient, and that it would

press very severely on poor proprietors, and he drew attention to Mr. Cross's Artizans' Lodgings' Bill, which was then before Parliament, under which the Town Councils and Commissioners in the United Kingdom were empowered to take up lands by paying compensation to owners to make the necessary improvements, and to let or re-sell the lands. This Council, however, did not accept that view, but passed the Act without the equitable provision which he took the liberty of suggesting. In reviewing the first administration report of the present Corporation, His Honor the present Lieutenant-Governor directed attention to this most important point, and recorded a resolution from which BABOO KRISTODAS PAL would read a few lines:—

"Mr. Eden believes that the proper way of dealing with these bustees is for the Municipality to set aside a certain amount of money every year, and to buy up block after block of bustees, clear it, drain it, lay it out with roads, fill in all dirty tanks and hollows, and then sell the land thus reclaimed in convenient lots for the erection of houses for the people on plans to be approved by the Municipality. The owners of these bustees are frequently not in a condition to pay for their improvement, even though it be shown to them beyond question that the value of the land will be enormously improved by the removal of nuisances and the levelling of the land If the matter were taken up systematically by the Municipality, they would probably find that the profit of reclamation was so certain as to warrant their raising special loans for the object, and thus, in a few years, getting rid of these sources of disease."

BABOO KRISTODAS PAL might mention that the late Municipal Commissioners followed the plan which His Honor suggested in this Resolution, and he held in his hands a list of the bustees which were reclaimed by them, by purchasing entire blocks of land and selling them in building lots. The first of these was Dunkin Bustee—a very large piece of land, which was a great nuisance to the neighbourhood, but the character of which was now entirely changed; in the place of dirty, stinking, miserable hovels, there were now palatial residences. In the same way Money Bustee was reclaimed, and another known as Peterson's Bustee. These were the three great bustees in the southern division of the town which were reclaimed in the way he had described. The present Municipal Commissioners had not lost sight of the question, but they were divided in opinion on the subject. He, and his friend DR. RAJENDRA LALA MITTRA, held that, under the law, municipal money could be applied to the purchase of bustees, that being one of the objects to which the municipal funds were applicable. Other Commissioners, however, held a different opinion, and at last the question was submitted to the learned Advocate-General, who was of opinion that, under the Act, it was not competent for the Commissioners to purchase land for the reclamation of bustees. He would read the following extract from that opinion:—

"The expression 'reclamation of unhealthy localities' in the 26th section, does not in my opinion apply to, or justify the purchase of, lands and the construction of necessary works of sanitation in bustees. The works referred to in the section in which the words 'reclamation of unhealthy localities' occur, are all works in which the public generally, and not private individuals, are interested; but assuming section 26 and the sections commencing with 280 in Part V of the Act to apply to the same class of subjects, and that the reclamation of unhealthy localities is an expression tantamount to taking sanitary measures with

regard to blocks of huts, still I do not think that the effect of sections 26 and 280, 281 and 282, read together, is to allow the Commissioners the choice of one of two alternatives."

This being the opinion of the highest legal authority, the Commissioners were unable to move in the matter, and it was now thought desirable to take power from the Legislature to apply the municipal funds to this purpose.

Another object of the Bill was to give practical effect to the provisions of the present law for the regulation of druggists' shops. It would be in the recollection of those members who were in the Council in 1876, that power was given to the Health Officer to inspect dispensaries where European medicines were sold, but unfortunately the law did not give him power to seize or condemn drugs which might have become inert or noxious through deterioration by reason of time or climate. The Health Officer of the Corporation thought that such power ought to have been given to him, and it was also considered advisable to apply to the Council for power to require the proprietors of druggists' shops to employ certificated compounders. Fatal accidents not unfrequently occurred through the ignorance or neglect of compounders. At present these compounders, or the majority of them, had no professional training whatever, and it rested with the employers to engage the services of such persons as they thought fit. The Government some time ago drew the attention of the British Indian Association to this subject, and suggested a system of certificating compounders, and the Bill accordingly proposed to empower the Government to make rules on the subject. If such a system were introduced, the students of the Campbell Medical School, and of the Dacca and Patna schools, would find a large field for employment. At present this measure would be confined to Calcutta, but if it should work well, it might be extended to the mofussil hereafter.

The last point in the Bill to which he would refer was the question of allowing pensions to persons partly paid by the Government and partly by the Corporation. On this subject there had been considerable correspondence between the Government and the Corporation. The latter did not agree in the view taken by the former, viz. that the Corporation should pay the pensions of such persons, on the ground that they were in no sense servants of the Municipality, but a part of whose salaries was borne by the municipal fund under a special legal obligation. He must frankly state that he did not accept the decision of the Government in this matter, but, as he had been put in charge of the Bill, he considered it his duty to introduce a provision on the subject in deference to the wishes of Government. It would be for the Council to say whether the power sought should be given to Government to compel the Corporation to pay the pensions of persons who were not servants of the Corporation, because their appointment and dismissal did not rest with it, but a part of whose salaries was met from contributions made by it.

There were a few other minor points in the Bill in respect of which he would not make any observations at present.

His Honor the President, in supporting the motion, said that, before putting the question for leave to introduce the Bill to amend the Calcutta Municipal Consolidation Act, he wished to say how glad he was that it had

been brought forward by a gentleman who had shown himself, by his many years of hard and earnest service, to be a most able and zealous representative of municipal interests. He was quite sure that, while the Bill was in the hon'ble mover's hands, nothing would be done which would in any way interfere with the well-being of the Corporation. He would just say, in passing, with reference to the proposal to defer the time for the extinction of the Government Consolidated Loan by extending the period for repayment and decreasing payments towards the Sinking Fund, that it had his entire support, and had been recommended for the sanction of the Government of India on the distinct understanding that, in consideration of what was now being done to assist and relieve them, the Municipality would take sufficient measures to increase the water-supply of the town in such a manner as would give a complete and thoroughly efficient supply not only to the town, but enable the Commissioners to meet the demands which would probably be made on them by the Suburbs. His HONOR understood that these views were now accepted by the majority of the Commissioners, and he supported the Bill on the understanding that the Corporation would be prepared to meet the Government so far.

As regards bustees, His HONOR thought the town never would be what it ought to be until the power for taking up lands, reclaiming them, and letting them out, was conferred on the Municipality. He himself had been under the impression that that body had this power. He very well recollected that in old days great results had been obtained by the Town Commissioners by taking up bustee lands in this way, and he thought it very desirable that measures should be taken to regulate the construction of buildings, whether European or Native, and other schemes for drainage and ventilation, on plans to be approved by the Commissioners. He was not sure how far the Municipality were to blame in this matter, but he had observed that some lands which had been reclaimed and made healthy and clean had now been allowed to pass away into filthy bustees again. He might mention that the land in the neighbourhood of Theatre Road, known as Baman Bustee, which had been taken up by the old Commissioners, was now rapidly retrograding into a bad native bustee.

As regards compounders, it was sad to think of the amount of mischief and loss of life which had been caused by the gross ignorance of the persons in charge of the many petty druggists' shops scattered all over the town. The subject had been forced upon the attention of Government very frequently in several ways, and not unfrequently by the proceedings of the Coroner's Court, and His HONOR thought the time had arrived when it was the bounden duty of the Corporation to see that arrangements were made to protect the lives of people by prohibiting these shops being placed in the hands of men who had little or no training or knowledge in the use of drugs; and he was willing to co-operate with the Municipality in this matter by establishing in the Government Medical Schools and Colleges cheap classes for compounders entirely distinct from the Government medical classes now in existence, the pupils of which would be fit to be employed by the owners of drug shops with a certain amount of reliance as compounders.

As regards pensions, HIS HONOR was sorry his hon'ble friend was unable to support that part of his own Bill. It seemed to him most unreasonable that the Corporation should dispute their liability to pay the usual proportion of the pensions of men who were lent to them by Government, and whose salaries they distinctly recognized their liability to pay so long as they had the benefit of their service. He did not understand the distinction made by the hon'ble mover that these persons, though employed under the Municipality, were not their servants. They were lent by the Government to the Municipality, and all payments to them should be chargeable to that body. He felt reason to hope that on a full consideration of the subject the hon'ble mover would be able to give this part of the Bill also his support.

The motion was agreed to.

The Council was adjourned to Saturday, the 26th February.

Saturday, the 26th February 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding.*
The HON'BLE G. C. PAUL, C.I.E, *Advocate-General,*
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
The HON'BLE T. W. BROOKES,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE CESS ACT, 1880.

THE HON'BLE MR. DAMPIER moved that the Bill to amend the Cess Act, 1880, be read in Council. He said that, in asking for leave to introduce this Bill, he explained that the object of it was to correct certain errors which had been made in the edition of the Bill which was finally passed as Act IX of 1880. He would first mention the main error, out of which arose the necessity for this Bill. Under the old Cess Act, the interest payable on arrears of cess was 12 per cent., whether the cess was payable to Government by the zemindar, or to the zemindar from his ryots. The Council agreed after full discussion, both in Select Committee and when the Bill was being passed, that the rate of interest should, merely for facility of calculation, be raised to 12½ from 12 per cent.; 12½ per cent. being exactly two annas on each rupee. All the sections of the Bill which were affected were altered accordingly, and so the Bill was originally passed by this Council, and submitted for the approval of the Governor-General. Hon'ble members were aware that the Bill as first submitted was

vetoed. Two lakhiraj sections were then omitted, and the Bill as so amended was again passed by this Council. In the Bill as it was finally passed by the Council, while the sections providing that the rate of interest on arrears payable by the ryot to the zemindar should be twelve and a half per cent. were correctly reprinted, in the section determining the rate of interest on arrears payable to Government, the rate was by some unaccountable error reduced again to twelve per cent., the words "and a half" having dropped out. That was the substantial error for which it became necessary to introduce a Bill.

The other amendments of the Act were such as the critical perusal which accompanied the working of an Act had brought to light.

The first of these was embodied in section 2 of the Bill. As the Act stood, the words in section 10 seemed to imply that interest on the Public Works Cess should be credited to the Road Cess Fund of the district. That of course was not intended.

Then came the proposed section 40A, to make which thoroughly intelligible to the Council Mr. Dampier should have to enter into a lecture on the minutiæ of administration which would be out of place. He had tried to explain the matter as fully as he could in the papers which had been circulated to the Council. Briefly, it was this: In Chittagong there was a vast estate, called the Noabad Estate, of which the Government was proprietor. The tenures in this estate, amounting to some 37,000, were scattered all over the district, and in some of these the amount of rent payable was most trifling, and the amount of cess was also extremely small, ranging down to items of less than one rupee. As they now stood, the different laws which regulated the collection of rent and cesses, required the collection of the cesses and of the rent on these 37,000 holdings by separate establishments and under different processes. In Chittagong, say fifty per cent. of the payers never thought of paying their dues until compulsory processes of some sort were taken out against them. Why should they? On the one hand some thirty per cent. interest would be obtained for the use of money; on the other, arrears of Government revenue carried no interest, and a man would indeed be blind to his own interests if he did not withhold the money due as revenue, and use it profitably and productively until the last moment.

As the law stood then, if a man fell into arrears of rent to the amount of one rupee, and of road cess to the amount of four annas on one of these 37,000 Noabad talooks, the rent and the cess must be collected by two different establishments and by two different processes. The Road Cess Committee, through their agent the Collector, and his cess establishment, must collect the four annas of cess; whereas the one rupee rent must be collected through the revenue tehsildary establishment of the Collector by another process. This would necessitate the issue of some 37,000 processes instead of some 19,000, which only would be required if the rent and the cess were collected together under one and the same process. The advantage of collecting both together by the same establishment and the same process was obvious, and he hoped the Council would therefore accept the section which was proposed to effect this object.

The last amendment which it was necessary for him to notice was that contained in section 9 of the Bill. The British Indian Association had brought to notice that the heading of the schedule there mentioned required zemindars to give certain details which very often they could not give as to the lands contained in their zemindaries; it was therefore proposed to relieve them of the obligation by adding to the heading of column 4 of that schedule the words "if known," after the words "area occupied."

The HON'BLE KRISTODAS PAL said, following the lines laid down by the hon'ble mover of the Bill, he wished to draw attention to Part I of Schedule A annexed to the Cess Act. This Part of the schedule required the owner to give details of lands in the actual occupation or cultivation of the person submitting the return, and a "Note" to that Part said that only nij-jote lands and unculturable unlet lands should be included in this Part. BABOO KRISTODAS PAL did not observe that Note when the Act was passed, and he did not understand the object of it. The principle of the cess was that all lands paying rent or yielding profit in some shape or other were to be assessed; but under this schedule the landlord was required to make a return of unculturable and unlet lands, and as in another column the probable annual value of the land was required to be given, although no rent or profit was derived from it, the result would be that lands which yielded no profit would be brought under assessment. Then, again, many zemindars were not in a position to give a correct return of unculturable and unlet land in their *nij* possession: auction purchasers in particular would experience great difficulty in giving the information required. The provision in question was not contained in the Road Cess Act of 1871; why it was introduced in the amending Act he could not say; but as it was in contravention of the principle of the cess, he hoped the hon'ble mover would take the matter into his consideration in Select Committee.

The HON'BLE MR. DAMPIER remarked that the Select Committee to which the Bill would be referred would no doubt consider the suggestion made by the hon'ble member, granting the premises that it was against the principle of the Act to assess the lands to which he had referred.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Mr. Reynolds, the Hon'ble Kristodas Pal, the Hon'ble Peary Mohun Mookerjee, and the Mover, with instructions to report within seven days.

AMENDMENT OF THE CALCUTTA PORT IMPROVEMENT ACT, 1880.

THE HON'BLE THE ADVOCATE-GENERAL moved that the report of the Select Committee on the Bill to amend the Calcutta Port Improvement Act Amendment Act, 1880, be taken into consideration, in order to the settlement of the clauses of the Bill. He had on this occasion to observe that the Select Committee had substituted a new section for section 10 of the Act, to make it clearly understood. Since the last meeting of the Council, a letter had been received by the Government of Bengal from the Chamber of Commerce, expressing their concurrence in the recommendation made by the Port Commissioners, and expressing a hope that the power vested in the Port Commis-

sioners would be exercised with caution and due regard to the public convenience. The ADVOCATE-GENERAL thought he might safely say that the desire of the Chamber of Commerce would be fully met, bearing in mind that the rules to be passed under the Act were to be made by the Lieutenant-Governor on the recommendation of the Port Commissioners. A slight mistake had crept into the form of debenture which he would wish to have corrected before the Bill was passed. Four-and-a-half per cent. was mentioned, in the form of debenture, as the rate of interest to be paid. That was a mistake; the rate of interest should be left blank, to be determined at the time when a loan was about to be contracted.

The motion was agreed to.

On the motion of the ADVOCATE-GENERAL the clauses of the Bill were considered for settlement in the form recommended by the Select Committee, and the Bill was then passed with the correction above referred to.

The Council was adjourned to Saturday, the 12th March.

Saturday, the 12th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE MAHARAJAH LUCHMESSUR SING BAHADOOR OF DURBHANGA,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

BURIAL BOARD (CALCUTTA AND ITS SUBURBS).

THE HON'BLE MR. MACKENZIE moved for leave to introduce a Bill to provide for the appointment of a Burial Board in Calcutta and its suburbs.

He said that the condition of the older Calcutta burial-grounds had frequently of late years attracted the notice of Government, and been unfavourably commented on by the public. The two cemeteries in the neighbourhood of Park Street had long since ceased to be used for purposes of general interment, and were fast lapsing into a state of ruin and disrepair. The monuments, consisting chiefly of those vast masses of brickwork which our predecessors were wont to pile over the remains of their departed friends, were falling in many cases to pieces, and there was no authority at present vested with power to deal with them. Even in the Circular Road grounds, though matters were of course not so bad, there was still in the older portions of the cemetery much disorder and untidiness from the want of a controlling authority competent to direct the repair, removal, or alteration of broken

down tombs. At the same time, owing to the fact that this cemetery was used by three different sections of the community—the Church of England, the Roman Catholic body, and the Non-Conformists—there was a want of uniformity and neatness in the manner in which the grounds were kept, the monuments put up, and other work done. The establishments were, moreover, under no proper control. It was proposed therefore to provide by law for the appointment of a Burial Board, in which should be represented the Calcutta Corporation, the Health Department of the Town, the Public Works Department of Government, and, as far as possible, the clergy and laity of the different religious bodies using the cemeteries. To this Board would be made over the control and management of all the Government cemeteries. Power was also taken to enable those interested in private cemeteries to make them over to the management of the Board on such terms as regards the defrayal of expenses and the like as the Lieutenant-Governor might approve.

The motion was put and agreed to.

The HON'BLE MR. MACKENZIE said the Bill had already been published under the authority contained in Rule 15 of the Rules for the Conduct of Business, and although much public attention had not been drawn to the subject, the matter was a simple one, and there could, he believed, be no possible objection to the Bill being at once read in Council and referred to a Select Committee for consideration. He therefore applied to His Honor the President to suspend the Rules in order that the Bill might be read in Council.

The President having declared the Rules suspended—

The HON'BLE MR. MACKENZIE moved that the Bill be read in Council. The Bill, he said, provided for the appointment of a Burial Board, in which the Calcutta Corporation and its Health Department would be represented, as well as the Public Works Department of the Government, and the three Christian bodies now using the cemeteries—viz. the Church of England, the Roman Catholic Church, and the Non-Conformists; the Chairman of the Board being appointed by the Government. The Bill gave power to bring under the control of the Board all or so many of the Government burial-grounds (not being military burial-grounds) situated in the town or suburbs of Calcutta, as might seem fit to the Lieutenant-Governor. The Board would receive and account for fees paid for the use of burial-grounds and the erection of monuments therein, and for any Government grants placed at their disposal. They were empowered to appoint and control their own subordinate establishment. The Bill also provided for the making of bye-laws; for regulating the conduct of business; for securing the preservation, repair, or removal of existing monuments, and for regulating the dimensions and erection of new monuments; for regulating the mode of payment of fees and charges, and the expenditure of the same; and for controlling the execution of all works within burial-grounds. These last were the most important provisions of the Bill, which were intended to give the Burial Board full power and control over the working of cemeteries. There was also inserted

in the Bill a provision to meet cases like the following: There were several minor burial-grounds belonging to small communities—for instance, the Scotch, Armenian, Greek, and other cemeteries—which were at present managed by the communities to which they belonged. These communities might perhaps some time or other wish to have their burial-grounds placed under the control of the Board, which they might consider, with the experience it would possess in the management of cemeteries, would be better able to administer the trust than private bodies liable to frequent changes and having no legal powers. Accordingly power was taken under the Bill to bring such private grounds under the control of the Board, on the application of those interested, on such terms and conditions as the Lieutenant-Governor might approve.

The motion was agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Reynolds, Allen, Prestage, and the Mover, with instructions to report within a week.

AMENDMENT OF THE EXCISE ACT, 1878

THE HON'BLE MR. REYNOLDS moved for leave to bring in a Bill to amend "The Bengal Excise Act, 1878," and in doing so, he said that the amendment of the Excise Act had been urged upon the Government from two different quarters. First the Board of Revenue reported that they found a practical difficulty in the working of section 58 of the Act. Section 9 authorized the Collector to fix the limits within which liquors, not manufactured at a licensed distillery, should not be introduced or sold without a pass; but section 58, the corresponding section which provided a penalty for breach of an offence against section 9, declared that whoever introduced or attempted to introduce for sale any spirituous liquors manufactured at another place, into the limits fixed for the consumption of such liquors manufactured at such distillery, without a special pass, should be liable to a fine. The Board pointed out that a great practical difficulty had arisen from the insertion in section 58 of the words "for sale." The difficulty was that, when liquor was found in transit, or in the act of being introduced from one circle to another, it was impossible to show that it was intended for sale, while in the case of an actual sale it was difficult to prove that the liquor which was sold was the very liquor which had been introduced from another circle.

The other quarter from which reference was made to the Government for the amendment of the Act was the Chief Commissioner of Assam, who urged that the Act did not meet some cases of what might be termed "foreign exciseable articles." These were dealt with by section 19 of the Act, which provided that spirituous liquor, manufactured beyond the limits of British India, should, on passing the limits of the territories to which the Act applied, be charged with duty, and the corresponding section which provided a penalty was section 64, which declared that any person found in illicit possession of spirituous liquors, manufactured beyond the limits of British India, should be liable to fine. It appeared, however, that in Assam there were certain parts of the province which were not beyond the limits of British India, but in which

no excise law was in force, for instance the Jynteah Hills, and in consequence that section did not apply to those territories, and liquor had been introduced from the Jynteah Hills where it was not subject to the payment of duty on manufacture, and the section did not admit of the levy of duty on such liquor. Section 64 was also imperfect in another particular, inasmuch as it applied only to spirituous liquors and not to intoxicating drugs. It appeared that ganja grew plentifully in the hills in a wild state, and under section 61 and section 64, as they stood, no one was liable to any penalty for being in possession of such ganja as long as it was held in quantities not exceeding a quarter of a seer. It was represented by the Chief Commissioner that there was a considerable illicit traffic in ganja which was brought from the hills beyond British territory into Assam, and it was desired that measures should be taken to put a stop to this.

As MR. REYNOLDS was at present only moving for leave to introduce a Bill, it was not necessary for him to explain in detail the provisions which the Bill would contain.

The motion was agreed to.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

THE HON'BLE MR. DAMPIER moved that the Bill to amend "The Court of Wards Act, 1879," be read in Council. He said that in asking permission to introduce this Bill, he made some remarks on points which now stood embodied in sections 2 and 3 of the Bill, and it would not be necessary for him to touch on those points again. He should therefore proceed at once to section 4, which contained a re-arrangement of sections 48 and 49 of the present Act. Those sections provided that the funds which came into the hands of a Manager should be expended for certain purposes in a certain order of priority. Hon'ble members, who had read the annexures to the Bill, would see that it was found impossible to adhere to that order of priority in practice; for instance, the Manager of the Narail Estate reported that a good Hindu would not take his food until the family idols were worshipped, but according to law, the Manager was not authorized to pay for pooja expenses until certain other things were provided for, and if the law was to be obeyed, he would, in certain cases, be obliged to starve his ward. Managers of wards' estates had a right to ask for such protection as could, by reasonable forethought, be devised against the necessity of breaking the law in such cases. MR. DAMPIER had accordingly endeavoured to recast these sections so that they should be more workable. He believed that the Council would consider the really important point in these sections to be the limit that was put on the expenditure of not more than 10 per cent. of the surplus proceeds of the estate on purposes of general benefit and improvement of the ward and his estate. MR DAMPIER had defined the restriction and limitation more precisely than it was defined in the Act. It was necessary under the existing law to obtain the special permission of the Lieutenant-Governor in such cases before a larger proportion than 10 per cent. of the surplus was so used: in that respect it was not proposed to weaken the check which the law imposed on the action of the Court of Wards.

Then, in the section which was substituted for section 49, MR. DAMPIER had tried also to express the meaning of the law more precisely, but he had put in a new proviso for the protection of the Court. According to the existing law, the surplus funds of an estate, belonging to a female who was of sound mind, and above the age of 21, was to be paid to her without question: as the law stood, she could claim the surplus at any moment. But it was obvious that the Collector, before handing over the accumulated surplus, must keep a working balance in his hands, and it was reasonable that he should also keep a sufficient balance to meet any considerable expenditure of which the necessity could be foreseen, and which could not probably be met out of the profits of the following year. These provisions were therefore introduced for the protection of the officers who had the management of the estate.

The next provision to which MR. DAMPIER would refer was contained in section 7 of the Bill, and related to suits instituted by female wards who had attained the age of 21 years. This was a new provision, and he did not know whether it would meet with the approval of the Council. It had been suggested by a practical difficulty in the working of the Act, and he hoped to get the opinion of the learned Advocate-General on it before the Bill was passed.

The next section was section 8 of the Bill, which was intended to meet the difficulty of getting accounts from farmers in wards' estates: the section was taken from a provision in the Land Registration Act, which was accepted by the Council as the best possible procedure. It was provided that the Collector could impose a daily fine on a farmer until he produced the accounts.

Section 10 of the Bill was to remedy a defect in the Public Demands Recovery Act. As the Act stood, the application of the Manager of a ward's estate to the Collector for a certificate for the recovery of arrears of rent must be on stamped paper. It had been discovered that, by an oversight, the Act did not provide for the recovery of the interest on the arrears, of the cost of the stamp, or of the costs of executing the certificate; so that, if the ward's Manager elected to proceed for recovery of arrears of rent due by the certificate procedure, he must either give up the interest due and the costs, or proceed to recover them by the separate procedure of a civil suit. The section by which it was proposed to remedy this omission would stand as section 63 of the Wards Act of 1879, taking the place of the section of the Act on the same subject which originally bore the same number, and which had been repealed by the Public Demands Recovery Act.

The last section of the Bill provided for the recovery, from those into whose hands any portion of the ward's property had passed from the charge of the Collector after its release, of any expenses which had been incurred by the Court on account of the property, in cases in which, in consequence of want of funds, oversight, or any other cause, such expenses had not been paid out of the funds of the ward's property before it was released from the charge of the Court.

The HON'BLE AMEER ALI said there was one point which he thought it proper and convenient to bring to the notice of the hon'ble member in charge

of the Bill at this stage. It was a point which had struck several practical lawyers, and could be discussed in Select Committee, and, if thought proper, could be included in the amended Bill which the Committee would submit for the consideration of the Council. It was a difficulty which had arisen with reference to section 27 of Act IX of 1879, which provided as follows :—

"Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such enquiry as he may deem necessary, and if satisfied that such person should be so declared or adjudged, shall make a report of the same to the court;

and the court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient."

Thus it would be seen that it lay in the hands of the Collector to make a report, and the Court of Wards made an order with reference to the person so reported to be disqualified as might be consistent with this Act. Section 6 defined who the disqualified proprietors were, one class of such persons being minors, and a minor was defined by the Act to mean a person who had not completed the age of twenty-one. It appeared to MR. AMEER ALI that these provisions of the Court of Wards Act involved some degree of inconsistency with the Indian Majority Act IX of 1875. That Act declared that a person who was not a Ward of Court, or for whom a guardian was not appointed by a Court of Justice, should be considered a major on the completion of his eighteenth year; but the Court of Wards Act provided that a person was a minor who had not completed his twenty-first year; so that under the last-mentioned Act a person who had under the Indian Majority Act entered into the enjoyment of all his legal rights, and had become vested with all the legal capacities of a major, might, on the report of a Collector, be deprived of those capacities, and be declared disqualified and incompetent to enter into any legal transaction. MR. AMEER ALI thought that the inconsistency to which he had called attention might, if possible, be removed, and therefore mentioned the point for the consideration of the Select Committee. The conflict existing between the two Acts was likely to occasion much hardship to people who entered *bonâ fide* into transactions with a person who was a major under Act IX of 1875, but who, under the Court of Wards Act, was declared a disqualified proprietor.

The HON'BLE KRISTODAS PAL said he could not allow this occasion to pass without acknowledging the liberality of Government in recognizing and rewarding the eminent services of Dr. Rajendralala Mitra to the cause of literature to his country, as well as to the State. Those services were well known and highly appreciated not only in this country, but also in Europe. The object of the Bill was primarily to give validity to the pension which the Government had been kind enough to grant to him, and BABOO KRISTODAS PAL felt sure that the native public would hail with pleasure and gratitude this generous recognition of the distinguished services of this illustrious man.

With regard to the remarks which had fallen from the hon'ble member on his right (MR. AMEER ALI), he could not concur with his hon'ble friend as to

the propriety of re-opening the question of the age of minors under the Court of Wards. He must say that that question had been discussed threadbare and settled after long and mature deliberation. He thought it was to the advantage of the proprietors of estates that the period of the nonage of minors under the Court of Wards had been extended to twenty-one years. It had not unfrequently been found that young men suddenly coming into the possession of large properties, without having their character properly formed and their judgment matured, fell into the hands of intriguers around them, and he thought the provision of law which enabled the Court of Wards to keep charge of an estate until the proprietor had attained the age of twenty-one years was calculated to prove highly beneficial to him.

The HON'BLE MR. MACKENZIE, in reference to the question of the age of majority, said that, in spite of what had fallen from his hon'ble friend opposite (BABOO KRISTODAS PAL), he thought it advisable that the matter should be considered by the Select Committee. It was not proposed by the hon'ble member who spoke first (MR. AMEER ALI), as he understood him, to reduce the age of majority, but to draw attention to the fact that, when a person who might come under the Court of Wards had attained the age of 18, it was uncertain, as the law stands, whether he was a minor or a major. Apparently the Court of Wards could take charge of his estates at any time up to his reaching the age of 21. There was nothing in the Act compelling the Court to come to a final decision about taking over the estate on the first occasion of its becoming aware of the disability. In a recent case, where a large proprietor had entered into the possession of his estate at the age of 18 years, it had been found useful by Government to have the power of check given, by its being apparently able to direct the interference of the Court of Wards at any time, although, so long as the property was well managed, Government did not wish to interfere. There might, however, be some question of the legal effect of such a course of action, and some difficulty in defining the position of such a minor-major, and it was just as well that the Select Committee should look into the matter in order to see whether any further definition or explanation of minority or majority was desirable.

HIS HONOR THE PRESIDENT said that, before putting the question, he wished to say, with reference to the remarks which had fallen from the hon'ble member on the left (MR. AMEER ALI), that he was very much averse to any such alteration in the age of majority under the Court of Wards Act, which should have the effect of preventing the Government from interfering for the protection of an estate the proprietor of which had not attained the age of twenty-one years. The case which had been cited by the hon'ble member on the right (MR. MACKENZIE) was a very well known case. While it was very desirable that the Government should have power to interfere, it was very often unnecessary to do so provided proper arrangements were made for the management of the estate by the family. The case which had been mentioned exemplified the working of the section. It was the case of the proprietor of a large estate who died suddenly, leaving an heir between the ages of 18 and 21. The proprietor had before his death made arrangements for the

management of his estate which worked exceedingly well, and it was considered very desirable that those arrangements should continue. But soon after the death of the proprietor, it came to the notice of His Honor that endeavours had been made to upset the system of management which the deceased proprietor had established, and he only succeeded in having the then existing arrangements continued by threatening to exercise the power vested in the Government to interfere in the management of the estate if any change was made. He believed that in this way one of the most valuable estates in Bengal had been saved from ruin. The power, although it might only be necessary to exercise it by way of influencing the action of the heir, was a very valuable one, and therefore he would wish that the power be retained. The subject had already been brought to the notice of Government by the hon'ble member in charge of the Bill, and it was one well worthy the consideration of the Select Committee, not with the view of altering the principle of the law, but getting rid of apparent inconsistencies, and of making it perfectly certain that the Government should have power to interfere in cases in which it might be desirable to do so. The hon'ble member who had raised this question would no doubt be placed upon the Select Committee, and the subject could then be carefully considered.

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Reynolds, Allen, Ameer Ali, Peary Mohun Mookerjee, Kristodas Pal, and the Mover, with instructions to report within a fortnight.

AMENDMENT OF THE CALCUTTA MUNICIPAL ACT, 1876.

The Hon'ble Kristodas Pal moved that the Bill to amend "The Calcutta Municipal Consolidation Act, 1876," be read in Council, and in doing so he said he should endeavour to give a brief analysis of the provisions of the Bill. In the first part of the Bill provision had been made to legalize the consolidation of the loans borrowed from the Government, and with respect to this point, it might be open to question whether it was at all necessary to make legal provision of this kind, because he found, on reference to the Municipal Act of 1876, that the Government loans were contracted outside the Act. It had, however, been found desirable to give legal effect to the consolidation of the Government loans, and the provisions of sections 2 and 3 had accordingly been inserted in the Bill. The opportunity had also been taken to indemnify the Trustees in charge of the Sinking Fund for making over to the Government the Government portion of the accumulations of the Fund up to date, in order to carry out the terms of the consolidation of the Government loans. The whole transaction had been completed—it was now a *fait accompli*, but the sections had been drawn on the lines of the Port Commissioners Amendment Act, in order that the Commissioners might at a meeting, other than an ordinary meeting, give effect to the transaction.

Power was given by another section to the Commissioners to set apart annually, in respect of future loans for the drainage and water-supply of the town, one per cent. on the total amount of the loans as a Sinking Fund for the

The President.

repayment of the loans. He had explained to the Council that, under the existing law, the Commissioners were required to assign two per cent. as a contribution to the Sinking Fund, but that contribution necessitated increased taxation, and unnecessarily threw a heavy burden on the present generation of rate-payers. The Commissioners therefore represented to the Government that it would be both reasonable and equitable that the liability should be divided between the present generation and posterity, and that the contribution to the Sinking Fund should therefore be reduced from two to one per cent. The Government of Bengal had acceded to that representation of the Municipal Commissioners, and supported it in a letter to the Government of India on the subject. With His Honor the President's permission he would read an extract from that letter. After alluding to the consolidation of the Government loans, and the relief afforded to the town by the arrangements made, the Secretary to the Government of Bengal remarked—

"The Corporation are now considering a scheme for largely increasing the supply of water, and extending it to the suburbs, and the Lieutenant-Governor proposes to amend Act V (B. C.) of 1876 so as to give the Suburban Commissioners power to levy a water-rate to cover the expenses incurred on their behalf by the Calcutta Municipality. The work in contemplation will be of such a nature as to last long beyond the present generation. The drainage works, too, are essentially of a permanent nature, and their benefits will extend to posterity. On the other hand, there is no ground for apprehending any decline in the prosperity of Calcutta, within any period to which reasonable anticipation can extend. Municipal taxation in Calcutta is very high, and the Lieutenant-Governor believes that any increase in the rates would seriously interfere with the progress of the town. Only once during the ten years, from 1870 to 1879, did the aggregate rate fall below 16 per cent., and in four of these years it was 18 or 18½ per cent. It is a question whether, even now, the population of the town is not less than it would be if the rate of municipal taxation were lighter. In the suburbs taxation is also high, and it is represented that, if the rate to be levied is to include provision for a two per cent. Sinking Fund contribution, the scheme will probably have to be abandoned. Under these circumstances, the Lieutenant-Governor proposes to make provision in the amending Act for a Sinking Fund contribution of one per cent. only on all public loans raised for water-supply, on the understanding that the Municipal Commissioners of Calcutta determine to lay a new 62 inch main conduit from Pultah, and he would make a similar provision in regard to loans for drainage works. He trusts the Government of India will signify their approval of this measure."

Baboo Kristodas Pal did not know whether any reply had been received to that letter, but he hoped the recommendation of the Government of Bengal would be accepted by the Government of India. The rate-payers of Calcutta ought to be grateful to Government for relieving them from so heavy a charge on the Town Fund, which was dictated by a sense of justice to the present generation. Whilst on this subject, he might advert to the provision made in section 12 of the Bill for the extension of the water-supply to the suburbs. He considered it his duty to point out that it was no part of the obligation of the Municipal Commissioners of Calcutta to supply water to the suburbs—that their sole duty was to supply water to their own rate-payers. But if the Commissioners of the Suburbs desired to avail themselves of the Calcutta supply, and would pay for it, the Calcutta Commissioners would certainly assist them. At present, the law did not authorize the Commissioners

of Calcutta to extend the water-supply to the suburbs, nor to levy a rate for the purpose; it was therefore proposed to give them power to extend the supply to the suburbs on the application of the Suburbun Municipality and the consent of the local Government, and to impose a water-rate on the suburbs sufficient to cover interest on the capital for the extension works, contribution to the Sinking Fund, and the cost of maintenance and supervision, and the necessary renewal of works. Accordingly, section 12 had been introduced, but he hoped it would be distinctly understood that it was not the object to throw an undue burden on the Calcutta rate-payers. If the people of the suburbs wished to drink the water of Calcutta, they must pay for it—unless they consented to pay the price, they could not justly be held entitled to the water.

He now came to some of the detailed provisions of the Bill. Section 5 legalized the designation "Town Council." It might be in the recollection of the Council that, when the Municipal Act of 1876 was passed, there was no provision in that Act for the constitution of a Town Council; but Mr. Metcalfe, who officiated for some time as Chairman of the Corporation, gave the name "Town Council" to the General Committee of the Commissioners. The business of the Municipality was carried on partly by the Chairman and partly by Committees of the Commissioners: there was the General Committee, which met every week—sometimes more than once a week: there were Special Committees which sat on special subjects and made reports, and these reports were considered by the Commissioners in meeting. The General Committee performed the functions of the body which, in Bombay and other places, was called the Town Council, and it was desired that that designation should be legalized; but it was not intended in any way to change the constitution of the Committees or their present procedure.

Then, some practical inconvenience had resulted under the present provision of the law, which required that the budget should be laid before the Town Commissioners at their quarterly meeting in October, when the Doorga Pooja holidays intervened. It was proposed to alter the time for the submission of the budget from October to November.

He now came to section 14 of the Bill, which related to pensions. He did not wish to discuss this subject at length, as he stated, when he applied for leave to introduce the Bill, that he was not responsible for the introduction of this section. He believed there had been some correspondence between the Government of India and the Government of Bengal on the subject, and it might probably be arranged hereafter that the section should be omitted, but he could not give any positive information to the Council regarding it—he would leave it to His Honor the President to explain the position in which the question now stood. But he repeated that, in his opinion, it was not fair and equitable to throw any charge for these pensions on the Municipal Fund, for the officers concerned were in no sense servants of the Municipality—they were not appointed by the Corporation—they were not liable to the control of the Commissioners, nor to dismissal by them. The Municipality paid a lump sum for the maintenance of the police under an Act of the Legislature, and it was never intended or declared that the funds of the Municipality should be burdened

with the pensionary allowances of persons who were all along considered to be Government servants. From 1867 to the present time, the Municipality had only been called upon to pay a certain portion of the cost of the police, but they were now for the first time asked to make a contribution towards their pensions as well. He hoped that the Municipality would be exempted from that burden.

He would now advert to what was known as the bustee question. The sections in the Bill had been drawn on the lines of The English Artizans Dwelling Act, and in framing the sections, care had been taken that no land should be acquired arbitrarily or hastily. First of all, any land or area which might be considered to be in a state dangerous to health would be reported upon by two competent medical men in addition to the Health Officer of the Town. After receiving the report of such medical men, the Commissioners would consider what improvements should be made. They might, if they thought it necessary, report to the Government, recommending that the land be acquired under the Land Acquisition Act, and they might then reclaim the land and carry out the improvements at their own expense, or re-sell the land to private individuals under certain conditions as to building, drainage, and other sanitary requirements. Compensation should of course be paid according to the Land Acquisition Act, and the Commissioners were authorized to borrow money for this purpose.

The next subject which BABOO KRISTODAS PAL would notice was the registration of shops for the sale of European drugs. There were some defects in the existing law as to registration, which it was now proposed to remedy by giving full power to the Health Officer. For instance, the present law did not give power to the Health Officer to seize any medicines which had become deteriorated by reason of climate or age, or to require the proprietor of any shop to employ a competent compounder. Section 21 gave power to the Municipal Commissioners to require the proprietors of drug shops to employ persons duly certified, under such rules as the Government might from time to time provide on the subject. His Honor the Lieutenant-Governor was pleased to say, at the last sitting of the Council, that he would be happy to co-operate with the Municipality by instituting a compounder's class in the Campbell Medical School, and lay down certain conditions to test the professional qualifications and capacity of men to be employed in druggists' shops.

The next provision in the Bill gave power to the Commissioners to license fuel shops near burning grounds. This subject was perhaps not thoroughly known to hon'ble members of the Council. They were doubtless aware that, near the burning ground, shops were kept for the sale of fuel and other articles for cremation: great abuses at one time existed in respect of these shops, and his friend, Baboo Chunder Mohun Chatterjee, moved Mr. Wauchope, who was then Commissioner of Police for Calcutta, to put a stop to those abuses by licensing one or two shops for the sale of fuel. The abuses were so great that Mr. Wauchope, though not having the support of the law, considered it necessary by a stretch of executive authority to regulate the sale of fuel at these shops by licensing one or two of them. That arrangement

continued when the late Justices came into existence. Sir Stuart Hogg examined the question, and he was also satisfied that, unless some hold was had on the sale of fuel at the burning ghats, great abuses would again arise, and he therefore continued the arrangements made by Mr. Wauchope, and those arrangements had since been in force. But lately, owing to a new interpretation of the law by a Bench of Magistrates in Calcutta, rival shops had sprung up, and some police cases had resulted in consequence. It was therefore proposed to give power to the Commissioners to license fuel shops with a view to put down disputes and litigation, and to check abuses. Section 24 of the Bill provided for that purpose.

These were the main provisions of the Bill; the other sections covered minor amendments, which did not call for particular remarks. But there was one point deserving of notice; which was at present outside the Bill. He meant whether the Municipal year should be brought into harmony with the Financial year of the Government. Hon'ble members had seen amongst the papers circulated with the Bill a letter from Mr. Secretary Macaulay, in which reference was made to this subject. The Municipal year in Calcutta corresponded with the calendar year, but the Secretary of State urged that the Municipal year in all the Presidency towns should be made to correspond with the Official year. This question was referred to the Commissioners some time ago, and BABOO KRISTODAS PAL found that it was reserved for consideration till the time when the Municipal Act might need amendment. The question had therefore been now again urged for consideration. He, for his own part, thought it would entail great practical inconvenience on the Municipality if the Municipal year were made to correspond with the Official year. All the municipal licenses corresponded with the calendar year, and if the Financial year were made the Municipal year, then the year of such licenses must be altered, the books of the Municipality must also be altered, and at least for one year the tax-payers, who had to take out these licenses, would have to pay license fees for a year and a quarter, and great practical inconvenience would thus arise. The object of the Government was, he believed, to have the municipal accounts made up according to the Financial year, and he understood that there was an executive order in existence under which the municipal accounts were furnished to Government according to the Financial year, so that the primary object of the Government, he ventured to think, had already been attained by the executive arrangements already in force. But if the Government should insist on the change of the Municipal year, it would be for the Select Committee to consider how far the wishes of Government might be met.

The HON'BLE AMEER ALI said he thought advantage should be taken of the present opportunity to do away with the anomalous position of the Municipal Commissioners of Calcutta, who were also Justices of the Peace, in trying cases in which the Municipality was a party. He believed doubts had suggested themselves in several quarters as to the legality of their proceedings, and he believed that such doubts existed in Bombay also. He had mentioned the matter to his hon'ble friend on his left (Baboo Kristodas Pal), and he

The Hon'ble Kristodas Pal.

thought it right that attention should be drawn to it in Council, that measures might be taken to solve the difficulty referred to. The Bombay Government was about to introduce a Bill to empower Presidency Magistrates, who were also Municipal Commissioners, to try cases in which the Municipality was a party; and as there was no special provision in the Calcutta Municipal Act giving such authority to them, he would urge upon the hon'ble member to introduce a provision in the Bill by which the question might be settled in a satisfactory manner one way or the other.

The HON'BLE PEARY MOHUN MOOKERJEE said there was one portion of the Bill regarding which too much care could not be taken in settling its provisions—he meant the sections of the Bill relating to the sale of drugs. It was certainly not intended that a grocer's or bunniah's shop should be required to be registered, or that such shops should employ certificated compounders to superintend the sale of such innocuous substances as ginger, cinnamon, or aniseed, which, to use the words of the Bill, were "drugs enumerated in the British Pharmacopœia." It would operate as a great hardship if the wording of the section was not altered so as to exclude the sort of shops to which he had referred. He thought that abkarry shops, or shops for the sale of exciseable articles, should also be expressly excluded, because the section as it stood would include these shops also.

The HON'BLE MR. MACKENZIE said, perhaps it was desirable that he should say a word with reference to the sections bearing on the Government municipal loans. It was doubtful whether they were really required in the shape in which they appeared in the Bill. It would be remembered that the Calcutta Municipality had made repeated efforts to get some reduction of the burden imposed on the present generation of tax-payers on account of the drainage and water-supply of the town, and the Government of Bengal had consistently supported the Municipality in those endeavours. The consolidation of the Government loans was one of the measures of relief which the Government of India, on representations made, had been good enough to grant. The Government had lent the Municipality 52 lakhs of rupees on account of water-supply at the low rate of interest of 4 per cent., and various other sums for drainage, markets, municipal offices, and the like, at 4½ per cent., subject to certain stipulations regarding sinking funds and repayments. The Municipal Act took, however, no direct cognizance of such loans, which were simply matters of contract between the Government and the Municipality. The Government made its own terms with the Municipality, and if it became necessary to enforce compliance with those terms, the Government knew where to find its remedy. When, therefore, in 1878 the Municipality applied for some modification of the terms of repayment, the Government of Bengal made certain proposals to the Government of India, and the Government of India took these into consideration and passed orders regarding them. No special need for legislative sanction was apparent. What the Government of India proposed was that the Municipality should hand over to the Government the Sinking Fund which had been held as against the Government loans, and that the whole of the balances of the loans should then be consolidated into one loan at 4¼ per cent., to be repaid in sixty equal half-yearly instalments. This proposal was believed

to be advantageous to the Municipality, and was accepted. It was then, however, found that the Trustees of the Municipality held not only the Sinking Fund accruing against the Municipal Debentures, but also the Sinking Fund accruing against the Government 4½ per cent. loans in one and the same account. A separation of accounts became necessary, and was easily effected. But a doubt arose whether, looking to the fact that section 337 of the Act bound the Trustees to hold all moneys in their possession when the Act was passed—when held for the purpose of paying off any sum borrowed by them—subject to the trusts declared in that section, some legislation was now required to show that the section was not intended to apply to, or affect in any way, the arrangements regarding the Government loans. This doubt might be fanciful perhaps, but it was the only matter in connection with the consolidation of the Government loans which seemed to him to call for legislation at all. There was again a point in connection with the Public Debenture loans which might or might not require legislation. In the Municipal Act provision was made that the sum of 2 per cent. on the *total* sum borrowed by the Commissioners for purposes of any enactment thereby repealed, and exclusive of the Government loans, was to be held as a Sinking Fund. The Government of India suggested that the Municipality should, in respect of future loans, instead of setting aside a sum of 2 per cent. on the gross amount of the loan, set apart 2 per cent. only on its net amount as it might stand at the beginning of each year—that is to say, after deducting the amount of Sinking Fund held against the loan. That was a matter for the Municipality to consider, and so far they had not come up officially for any amendment of the law to enable them to take advantage of the proposal; but he observed that in the Bill effect was apparently sought to be given to it. The second clause of section 4 of the Bill provided that, in respect of loans contracted after the passing of the Act, a sum of not less than 1 per cent. on the total sum borrowed by the Commissioners, after deducting the total amount previously set apart as a Sinking Fund in respect of such loans, should be set aside yearly towards the discharge of the loans. This proposed a double concession to the present generation of tax-payers. The hon'ble mover of the Bill had only referred to one—the reduction of the rate of payment to the Sinking Fund; but it would be seen there was a further modification, in that this percentage was to be calculated only on net, and not on gross, indebtedness. He might further remark that, if the Sinking Fund was to be calculated on the net debt, there was perhaps no necessity for a Sinking Fund at all. It would be sufficient to provide that the sum of 1 or 2 per cent., as the case might be, should be appropriated annually to buying up and cancelling Municipal Debentures. After all, however, it was doubtful whether legislation was required to meet the case of these future loans, seeing that, under section 334 of the Act, the terms of loan and repayment had to be settled in each case by Government and the Commissioners. Section 337 was only designed to protect the *status quo* at the time of passing the Act in 1876.

MR. MACKENZIE thought it desirable to make this explanation, because the object of the sections to which he had referred might not be under-

stood. He would not follow the hon'ble member through the other remarks which he had made, except to say shortly, in respect to the extension of the water-supply to the suburbs, that it would be wise policy to recognize something like solidarity between the town and suburbs. According to the provision as it now stood in the Bill, the Calcutta Municipality might carry out in the suburbs any scheme of water-supply they pleased, at any cost they pleased, and charge the rate-payers of the suburbs any amount they pleased: the rate of interest to be charged not being even mentioned in the Bill He did not think that this was an arrangement that either the inhabitants of the suburbs or the Government could contemplate with satisfaction.

The HON'BLE KRISTODAS PAL explained that it was not intended that the Municipality should have the arbitrary power of imposing a water-rate on the suburbs. Specifications and estimates of works necessary for the extension of water to the suburbs would be submitted to the Government, and as no such extension could be carried out without the sanction of the Lieutenant-Governor, the determination of the rate would ultimately rest with His Honor. It was provided in the Bill that the Municipality should have power to levy such a rate as would cover all costs of construction, establishment, and maintenance; but if the rate were fixed by law, it might prove insufficient and embarrassing. The determination of the rate ought therefore to be left to the Commissioners subject to the sanction of the local Government.

HIS HONOR THE PRESIDENT said that, before putting the motion, he wished to make one or two remarks on the subjects which had just been alluded to; and first, in answer to what had fallen from the hon'ble mover, HIS HONOR thought that the section relating to the supply of water to the suburbs required very careful consideration by the Select Committee. It seemed to him that this section, as worded, would impose upon the suburbs a liability very much in excess of what he believed was right. He was sorry to see a tendency on the part of the Municipal Commissioners of Calcutta to treat the Suburban Municipality with a sort of jealousy. There seemed to be some objection on the part of the Calcutta Municipality to recognize that the suburbs were, as a matter of fact, part of Calcutta, and an inclination to shut them out from the advantages which the people of Calcutta enjoyed chiefly from the assistance of Government. The Calcutta water-works, as he and hon'ble members well knew, had been carried out by the Calcutta Municipality, but they could never have carried them out unless they had received very marked assistance from the Government. They ought to be willing to let the suburbs share in the advantages thus derived, if they could do so without any extra expenditure to themselves. The water-works were carried out by a loan of half a million from the Government, and the Municipality had every facility in the way of the services of engineering officers from the Government, and they were allowed to construct the work a distance of 14 miles along a Government road. This being so, HIS HONOR thought they should recognize the fact that the health of Calcutta and its prosperity were to a great extent wrapped up in the health and prosperity of the suburbs. There were many people who resided all day in Calcutta, but who lived in the suburbs, and who came here every day to do their work.

Calcutta was dependent to a great extent on the suburbs for labour and other conditions which made life and trade in Calcutta possible. He thought that, instead of grudging the suburbs aid in the matter of water-supply, they should allow them ungrudgingly such benefit as they could enjoy from the existing head works and mains of the Calcutta service without detriment to Calcutta. It was, of course, quite fair that if the water-service was extended to the suburbs, the residents of the suburbs should pay such a rate as would entirely relieve Calcutta of any extra cost *bonâ fide* incurred for that purpose, but they should not be called upon to pay any charges which Calcutta would have to incur if the water-supply was not so extended. It seemed to him that the section, as now drawn, left it open to the Calcutta Municipality to assess the people of the suburbs to a degree which would involve a prohibitory charge by making them pay something in excess of what was the fair cost of laying down the water in the suburbs. He quite agreed that all extra expense involved in extending the works to the suburbs would be a fair charge upon the suburbs, but he strongly protested against throwing upon them the cost of works which were not rendered necessary exclusively by that extension, and he hoped that the Select Committee would give their careful consideration and see that some proper control was provided, so that the suburbs might not be shut out altogether by a prohibitory rate, or that the rate imposed upon them was not made unreasonably heavy.

He would now come to the question of pension. Hon'ble members had just been told that the Municipal Commissioners objected to pay anything towards pensions of Police officers, because they neither appointed nor controlled the Police: he must remind them that the payment of the Police was a duty which was thrown upon them by law just as much as drainage, water, and other rates; they had to prepare a budget which was to receive the sanction of Government, and after the budget had been received, the local Government determined, year by year, how much it would give towards the maintenance of the Police as a contribution to Municipal Funds. The Municipality had to find the pay of the Police by law, less only such amount as Government saw fit to contribute year by year: and pension was really only a form of deferred pay. Although we all had great respect for the Municipal Commissioners, and the way in which they managed their work, he did not think that the detailed control of the Police was a matter which could in any way be advantageously vested in the Corporation. As a matter of fact, particularly as regards pension, the Government had always behaved with great liberality to the Municipality. About two years ago, His Honor received a proposal from the Government of India calling upon the Municipality to pay a contribution towards the pension of the Commissioner of Police. He pointed out that the Municipality paid a very heavy sum for the maintenance of the Police, that the municipal rates were very high, and that the Municipality should therefore, in his opinion, not be called upon to make any contribution for such purpose. The Government of India replied that, although they claimed the principle to be correct, they were willing, in consideration of what the Municipality was doing, to make the pension a part of the

The President.

contribution from the Government, and that claim had been withdrawn. Since then, about the beginning of this year, he received a letter from the Government of India, directing him to take measures for the amendment of the Municipal Act, in order to make the Municipality bear a share of the pensions and gratuities granted to servants who were partly paid by the Government and partly by the Municipality. He must say that that principle seemed to him to be perfectly fair and justifiable, but, as he had before said, he was willing to recognize the fact that the Municipality had very heavy charges to meet, that taxation was very high, and though the charge for pensions was not a heavy item, he desired to save them as much as he could from further expenditure for Police; he accordingly wrote to the Government of India as follows:—

"The proposal to require the Calcutta Municipality to contribute for pensions has been more than once discussed. The circumstances have materially altered since Mr. Dampier's letter No. 530, dated 31st January 1868, was written, and Sir Ashley Eden is of opinion that the validity of the claim of Government to these contributions is indisputable; but he thinks that the present time is not opportune for enforcing this claim. As has already been stated in my letter No. 143, dated 23rd ultimo, to the Financial Department, on the subject of the Sinking Fund contribution on future public loans for water-supply and drainage, taxation in Calcutta is extremely high, and any considerable increase in the burdens thrown on the rate-payers must affect the prosperity of the town. The Commissioners are about to incur very heavy expenditure in increasing the supply of filtered water—a measure absolutely indispensable to sanitary progress. Government have unceasingly urged upon them the necessity of pushing forward vigorously the work of filling up filthy tanks and improving the condition of bustees in the town. The extension of the water-supply will remove one obstacle to the prosecution of the first measure; while the provision about to be made in the amending Act, enabling the Commissioners to acquire bustee land for the purpose of reclaiming and building on it, or letting it for building sites, will give the Municipality ample powers to deal with the second question. But while the way will now be open to the execution of those essential sanitary reforms, it is most important that no avoidable financial difficulties should be allowed to arise. The Lieutenant-Governor believes that it would have a very good effect, and would greatly strengthen the hands of Government, in insisting on the systematic prosecution of these reforms, if the Government of India were to postpone for the present the enforcement of their claim to pensionary contributions, and to declare, as was done in the case of the Chairman's contribution for leave and pension allowances, that the exemption, so long as it is permitted, must be held to be a substantial contribution by Government to the municipal revenue of the town."

He had this morning received a reply from the Government of India to that letter, in which they said:

"I am directed to acknowledge the receipt of your letter No. 175, dated the 7th instant, and in reply to say that, under the circumstances represented, the Governor-General in Council is pleased to sanction the recommendation of His Honor the Lieutenant-Governor, that the Government should, for the present, forego the enforcement of its claim for pensionary contributions from the Calcutta and Mofussil Municipalities.

"The principle that such contributions are claimable should, however, be definitely asserted in the Municipal Acts now under amendment in Bengal; and it would, in the opinion of the Governor-General in Council, facilitate the settlement of the question, and prevent risk of future misapprehension, if the obligation were at once imposed in the legislation at present under consideration of the Government of Bengal, power being reserved to the local Government, with the previous sanction of the Governor-General in

Council, to exempt the Calcutta or other Municipality at any particular time from the payment of contribution, in the event of sufficient reasons being shown for such temporary exemption."

That was how the matter now stood. The Government of India had consented to forego its demand for contribution to pension, but they wished to have the principle asserted in the Act. His Honor himself must say that he saw no great object in inserting the principle in the Act if it was the intention to forego payment, and he would take an opportunity of making a further representation, and point out that the liability having been declared by the Government, it would be better to leave the whole question to be settled hereafter, the Act being amended when necessary for this purpose, rather than to disfigure the Act in the way in which it was proposed by putting in a provision which was not to be enforced. Whether the Government of India would consent to that proposal, he could not say; but in the mean time the Select Committee should consider the orders of the Government of India, and endeavour to frame a section which would meet the views of the Government of India.

He did not think that there was anything further in the Bill which called for remark in this stage, but he had no doubt that its provisions would receive the careful consideration of the Committee, and that they would also consider the suggestion which had been made by the hon'ble member on the left (Mr. Ameer Ali).

The motion was then agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble the Advocate-General and the Hon'ble Messrs. Cockerell, Mackenzie, Allen, Ameer Ali, and the Mover, with instructions to report in a fortnight.

AMENDMENT OF THE CESS ACT, 1880.

The Hon'ble Mr. Dampier moved that the report of the Select Committee on the Bill to amend "The Cess Act, 1880," be taken into consideration in order to the settlement of the clauses of the Bill, and that the clauses of the Bill be considered for settlement in the form recommended by the Select Committee.

The motion was agreed to.

The Hon'ble Mr. Dampier moved that the following note be substituted for the note which stood below Part I of Schedule A:

"Note.—In the body of this statement should be entered only nijjote lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value."

This amendment, he said, was the result of the opinion expressed by the hon'ble member opposite when the Bill was read in Council, and also in Select Committee. A communication had since been received by the Lieutenant-Governor from the British Indian Association on the subject. It turned on the point whether uncultivated nijjote lands were to be entered in the return as liable to assessment or not. There had been a good deal of discussion on the matter informally, and the Government had ultimately accepted the amend-

The President.

ment which MR. DAMPIER now moved, and which he hoped would meet with the approval of the Council.

The HON'BLE KRISTODAS PAL said he was willing to accept the amendment if it was worked out in the spirit in which it was moved. He hoped that the Board's instructions to Collectors would be sufficiently explicit so as not to give rise to complications in future. As far as he understood the object of the Cess law, it was that the cess should be calculated on the rental or profit derived in some shape or other, and the definition of "annual value" in the Act of 1880, although somewhat vaguely worded, implied that only land capable of valuation in some form or other, that was to say, land yielding profit or some advantage to the owner, was liable to assessment.

The HON'BLE MR. DAMPIER observed, in reply, that it was impossible that any pledge should be given in this Council on behalf of an institution so proverbially irresponsible and intangible as a Board, but he would express a confident hope that the Board of Revenue would endeavour to do full justice to the intention which actuated the introduction of this amendment.

The HON'BLE MR. MACKENZIE remarked that it was not the principle of the original Road Cess Act that the assessment should fall only on actual rental or profits; possible profits had also to be considered. Under section 4 of the Act, all "immovable property" was liable to pay road cess; and the term "immovable property" was defined in section 3 to include land. But "land" meant "land, whether cultivated, *uncultivated*, or *covered with water*." Land falling under the last part of that definition might very well be land yielding no actual profit. It was not, however, apparently the intention of the Act that land which was absolutely worthless should pay cess, for that on which the assessment was calculated, namely, the "annual value of the land," was defined to be the "total rent paid or, if no rent was actually paid, the rent which would be reasonably expected to be payable during the year by all the cultivating ryots thereof, or by other persons in actual use and occupation thereof." These last words led to the inference that waste lands which were absolutely unculturable, or capable of yielding no return of any kind, were not to be assessed, but where land might be made capable of yielding a rent under any circumstances it must pay road cess, whether the owner chose to utilize it or not. He believed, however, that in practice only lands returning actual profits were included in the returns.

The motion was put and agreed to.

The HON'BLE AMEER ALI moved that the proviso in clause 3, section 44 of Bengal Act IX of 1880, commencing with the words "subject, however," and concluding with the words "the holders of such share," be omitted. He said that the great hardship which was entailed upon the co-sharers of a mehal by the insertion of this proviso in section 44 was the reason which induced him to bring forward the motion. He had received several communications on the subject from zemindars in Behar, one of which he forwarded to the hon'ble member in charge of the Bill. The hon'ble member was good enough to consider the suggestion, which however he thought to be impracticable. MR. AMEER ALI himself was of the same

opinion. The suggestion was to the effect that the cesses should be required to be paid with the Government jumma; but it appeared to him that it would be hardly possible to do so unless the cesses were consolidated with the Government revenue. The only remedy seemed to him to be the omission of the proviso mentioned in the amendment. It occurred only in clause 3, and presumably applied only to such co-sharers as were mentioned in that clause. There appeared to him therefore to be no difficulty in omitting it. MR. AMEER ALI did not see the justice of making co-sharers, who were in every respect separate, who paid their jummas separately, who had separate accounts with the Collector for Government revenue, liable for the laches of a co-sharer, who was a co-sharer only in name and by a fiction of the law. He would read, with the Hon'ble President's permission, a passage from the communication already referred to by him, to show the great hardship which was caused by the joint-liability clause in section 44 of the Cess Act. It was as follows:—

"In the province of Behar, the mehals, generally speaking, consist of ten or twenty mouzahs, each owned by numerous and different co-sharers, so much so that the *malik* of one mouzah is not acquainted with the *maliks* of the other mouzahs, nor is he aware of the different shares in the remaining mouzahs held by the respective *maliks*. As there is only one and the same *toujih* number for the mehal, a joint assessment is made in respect of the same. And when the Road and Public Works Cesses run into arrears, the shareholders of the mehal cannot possibly know which particular sharer is liable for such arrears, and whether the debt in reality is due or not, and if due, how much it amounts to. The payment consequently is impossible. The co-sharers and the shareholding proprietors of larger shares do not allow Road and Public Works Cesses to fall into arrears. The holders of small shares generally allow the cesses to remain unpaid, so that, in the event of the same being paid by the large shareholders, it is difficult for them to reimburse themselves. Under these circumstances many mehals would be put up to sale, and innocent parties deprived of their estate along with the defaulters."

The provision in the Revenue law by which the entire body of co-sharers were made liable for default committed by one of them in the payment of the Government cess, was a traditional rule handed down from former Governments, who not unfrequently visited the sins of the fathers on the heads of the sons. It appeared to MR. AMEER ALI, however, that the circumstances connected with the separate payment of revenue by co-sharers did not apply to the separate payment of cesses. He could understand the reason for the Revenue authorities placing the payment of Government revenue on a different basis from the payment of cesses, which was a due of quite a different nature—cesses, as a matter of fact, were not payable in such large amounts as the Government revenue. It was possible that when default was committed in the payment of revenue, and the specific share in default was set up for sale, the highest offer might not be equal to the amount of revenue due; but it could hardly ever happen that, when a specific share of an estate was set up for sale for arrears of cess due, the highest offer would not suffice to meet the amount due. He therefore thought that there was no sufficient reason for the insertion of the proviso in clause 3, section 44 of the Coss Act, and he knew that it caused a great deal of hardship on persons who were co-sharers in a mehal,

and therefore the only means of remedying that hardship was to strike out the proviso in clause 3 altogether. He did not see that the omission of the proviso could do any harm in respect of the recovery of the cesses; the section remained intact, and the specific share remained primarily liable for recovery of the arrears. The whole mehal would remain liable for the Government revenue as before, but the other co-sharers would not suffer for the laches of one co-sharer, generally a small shareholder, in the payment of cesses. In view of the hardship and vexation occasioned by the law as it stood at present, he hoped the Council would agree to the amendment proposed by him, or the Bill might be referred back to the Select Committee, with instructions to devise a clause calculated to obviate the evils to which he had referred.

The HON'BLE PEARY MOHUN MOOKERJEE said he entirely agreed in this amendment. If the objectionable passage contained in clause 3 of section 44 of the Cess Act were expunged, he thought the security for recovering arrears of cess would not be in the least jeopardized: arrears of cess were ordinarily so small in amount, that he thought there was no fear of the Government incurring any loss by reason of not being able to recover those arrears if the provision to which objection had been raised was struck out. He thought that the considerations affecting cess and revenue were so different that there could be no comparison whatever as to the means to be provided for the recovery of arrears of cess in the one case and of revenue in the other. He perfectly agreed with the hon'ble member in thinking that great hardship was experienced by shareholders from the operation of the proviso which he now sought to remove from the Act: they were not only liable to be sold out, if the revenue of a co-sharer had not been paid, but they ran a similar risk if a small arrear of cess were due on account of a small fractional share of an estate in which they had no interest whatever.

The HON'BLE MR. DAMPIER said the hardships arising from joint liability for the payment of cesses were, he presumed, the same in character and very much less in degree than those which arose out of joint liability for the payment of Government revenue. The hon'ble gentleman, the mover of this amendment, in speaking of the Government enforcing that joint liability for revenue, likened it to the visiting of the sins of the father upon the children. It was not for MR. DAMPIER to give the hon'ble gentleman a lecture on the law of contract, but he would ask him to remember that an estate when created was created as a whole—the engagement with the Government was for the estate as a whole. One condition above all others was attached, that, without the consent of the Government to the division of an estate, and the assessment of the revenue in proportion to the shares into which it was divided, there should be no disruption of the joint liability for the payment of revenue. The process which the law afforded to proprietors for getting rid of this joint liability was well known as the Butwarrah law, and those joint proprietors who wished to take advantage of that law could do so without asking for any favour from the Executive Government.

If they did not choose to do this, certainly the sons had so far to suffer for the sins of their fathers, that they inherited their estates with precisely the

liabilities which their fathers had attached to them, or subject to which the fathers had voluntarily acquired them. It was not unusual for sons to suffer for the sins of fathers to this extent in matters of property.

MR. DAMPIER would next notice the last remark which the hon'ble mover of the amendment had made. He said that, where the Government revenue was in arrear, it might perhaps happen that the sale of the share in default would not yield sufficient to cover the arrear, but that the amount of cesses payable was so small, in proportion to the market value of an estate, that that was not a possible contingency where arrears of cess and not revenue were due, and that therefore it was practically unnecessary to keep alive the ultimate joint responsibility of all the co-sharers in an estate for arrears of cess due on a share of the estate, to be enforced only in case the arrear was not realized by sale of the share only. In answer to the communications to which the hon'ble gentleman referred, MR. DAMPIER had pointed out that the proposal was founded upon the misconception that the liability for payment of cess followed the land. That was not the case—it followed the person. After putting in force the certificate procedure, the share of the estate belonging to the defaulter might be sold just as his interest in any other land, unconnected with the cess in arrear, might be sold for the debt—but not otherwise.

These remarks arose directly out of what had fallen from the hon'ble member in moving this amendment, but the proposed amendment raised so important a question, that MR. DAMPIER had considered it very thoroughly before coming into the Council-room. The argument which had been advanced was a specious one in no bad sense, but in the sense that the advantages of the proposed measure were patent and lay on the surface, whereas the objections were latent—hidden under a mass of rubbish and details, from which to exhume them required the pick-axe of an expert. This particular question of relieving the joint sharers in an estate from liability on account of the default of a co-sharer was a matter of such importance, the benefit which this proposal would confer on the individual tax-payer was so great, it was in a direction in which MR. DAMPIER was so often pressed to go, and the measure was one of which he would be so glad to advise the adoption if it were possible, that he thought it due to the Council to explain as fully as possible why it was impossible in the general interests of the public to accept this amendment or any other in the same direction.

But in order to make the reasons intelligible, he was obliged once more to ask the Council to allow him to give them one of those homilies on revenue details for which he was so often obliged to ask their indulgence:—

"The difficulty of accepting the amendment lies in the fact that the sections of Act XI of 1859, which treat of the opening of separate accounts for shares of the sudder jumma, do not require that the share of the sudder jumma, in respect of which the separate account is opened, shall bear the same proportion to the entire sudder jumma of the estate as the assets or value of the fractional share, or of the land in respect of which the separate account is opened, bear to the entire assets or value of the estate.

The Hon'ble Mr. Dampier.

If it were otherwise, if the law insisted, as the Butwarah law does, on a proper proportion being kept up between assets and sudder jumma, it might be possible for the Government to entertain the hon'ble member's proposed amendment, for it might with reasonable safety be assumed that, when a share in an estate, for which a separate account has been opened by the Collector, is brought to sale for arrears of revenue, the sale will yield a surplus over the arrear of land revenue on which the Collector might lay hands in payment of any arrear of cess due from the same proprietor. But, as the law stands, there is nothing to prevent a joint proprietor in an estate from having a separate account opened in respect of 12 annas of the entire sudder jumma, that is, accepting for himself the liability to pay 12 annas of the entire sudder jumma, while declaring himself to be the proprietor of a very small fraction only of the estate, of which fraction the assets are, say, not more than one-eight of the entire assets of the estate, and insufficient even to pay the share of the sudder jumma for which he causes a separate account to be opened in his name.

Under these circumstances, the hon'ble member's amendment, if adopted, would leave open the door for collusion to defraud the Government and the District Committees of the cesses due. Taking for illustration the case of an estate in which the recorded joint proprietors are A and B—the former a man of substance—the latter a man of straw, and A's creature.

Immediately a separate account for a share of sudder jumma is opened, A and B will, under clauses 2 and 3, section 44 of the Cess Act, become liable for the cess assessed in respect of the entire estate "in proportion to the amount of Government revenue, for the payment of which their respective shares remain liable." Let us suppose that B has caused a separate account to be opened in his name, accepting a liability for 12 annas of the entire sudder jumma Then, immediately on the account being opened, A will be liable, say, for Rs. 250 only, and B for the remaining Rs. 750 out of a thousand, which is the entire amount of cess on the estate. B having defaulted for land revenue, the share, in respect of which the separate account is open in his name, is put up to sale; as it is encumbered with a higher amount of land revenue than it can pay, no outsider will buy it, and of course A, the substantial joint proprietor in the estate, will buy the share in, either in his own name, or *benamee* in that of some other man of straw, say C, so as to save the entire estate from being put up to sale for the arrear, but he will only bid the exact amount of arrears due—there will be no surplus profits of the sale to be paid to B, from which the Collector could deduct the Rs. 750 of cess due from B.

So the Collector must proceed to realize the cess from B by the certificate procedure. But B is a man of straw, and long before the certificate is issued, he has made over his moveable property to his sisters, his cousins and his aunts. He has no other immoveable property, and the nazir makes his return—"No assets can be discovered." At this stage, as the section which the hon'ble mover of the amendment wishes to alter now stands, the Collector would enforce the joint liability of A, and proceed to recover the Rs. 750 of cess from him. But if the section is mutilated as the hon'ble member proposes, "the general responsibility of the holders of the entire estate," *i.e.* of A, will have

absolutely ceased from the date on which the separate account of land revenue was opened, and the amount of cesses due will be irretrievably lost to the Public Exchequer and the District Committees, and this game might be played over and over again with perfect safety to A.

The case of collusion between A and B has been here taken as the best for the purposes of illustration, but MR. DAMPIER could assure the Council that a similar danger would exist in cases in which there is no collusion, but in which (B being a man with no other property) the share of the estate, which *bonâ fide* belongs to him, has by private arrangement among the proprietors of the estate been burdened with an undue share of the land revenue demand."

The HON'BLE AMEER ALI said, in reply, that he thought the difficulty suggested by the hon'ble member (Mr. Dampier) might easily be obviated by adding some clause to cover such special and hypothetical cases. Such cases were extremely unlikely to occur in actual practice, and, with the safeguards which the law provided against collusion and fraud, it was impossible to suppose they could occur with impunity. At all events, the great boon which would be conferred on the large mass of proprietors by the omission of the clause in question would compensate for any mischief which in some rare instances, according to the hon'ble member in charge of the Bill, was likely to arise if MR. AMEER ALI'S suggestion was adopted. That suggestion was offered from the practical level of those who had to suffer from the working of the Act, and he hoped that it would meet with the approval of hon'ble members. Some portion of the hardship at present entailed upon proprietors would be removed by requiring the Collector to give some distinct notice to the entire body of shareholders in a mehal, so as to enable them to know who the defaulting co-sharers were, and what the amount of the cess in arrears was. He might mention one instance in which, if such a course had been adopted, much hardship would have been avoided. There was one mehal in the Patna district which had been put up for sale for default committed by certain co-sharers in the payment of the cess. This mehal consisted of 12 mouzahs, and was in possession of 20 maliks, and though the property was put up for sale, the majority of the co-sharers were not aware up to this time who the defaulting co-sharers were.

HIS HONOR THE PRESIDENT said he thought the question which had been raised was a very important one, but it hardly came in properly in connection with the Bill now before the Council. The object of this Bill was not to reconsider and to revise all questions relating to the assessment and recovery of cess, but to correct certain obvious errors in the Act which had been discovered in the course of its administration. The question which had been raised was one which had possibly not been considered before; it involved important principles, and could only be decided after careful enquiry from local officers. Acts, such as the Cess Act, were very frequently amended, and another opportunity would no doubt occur for proposing the change suggested. In the mean time, the point could be noted and enquiries could be made from the revenue officers in Behar on the subject. He would therefore suggest the propriety of the hon'ble member withdrawing his amendment on the present

occasion, leaving it for consideration on the occasion of some subsequent amendment of the Act.

The amendment was then by leave withdrawn.

The HON'BLE MR. DAMPIER postponed the motion which stood in the List of Business that the Bill be passed.

The Council was adjourned to Saturday the 19th March.

Saturday, the 19th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE KRISTODAS PAL, C.I.E., RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

BURIAL BOARD (CALCUTTA AND ITS SUBURBS).

THE HON'BLE MR. MACKENZIE moved that the report of the Select Committee on the Bill to provide for the appointment of a Burial Board in Calcutta and its Suburbs be taken into consideration in order to the settlement of the clauses of the Bill. He said that the Select Committee had not found it necessary to make any material amendments in the Bill. They had inserted a clause providing for the resignation of Members of the Board by enabling the Lieutenant-Governor from time to time to relieve any Member of the Board nominated by him of his functions as a Member of such Board. The other amendments which the Committee had made in the Bill were merely of a verbal nature.

The motion was put and agreed to.

The HON'BLE MR. MACKENZIE asked leave to postpone the remaining two motions which stood in his name. Finding that no criticisms—in fact no notice—of the Bill had appeared in the public press, he had sent copies to all the leading dissenting clergy in town, and had received from a few of them replies. Briefly, he might say, as far as the replies went, they all approved of the principle of the Bill, and the chief point on which suggestions had been made was that of the constitution of the Board Some of those consulted thought that the Bill ought to provide for a larger proportion of the clerical element on the Board, while one gentleman thought that no clergymen at all ought to be appointed. As these suggestions did not go to the principle of the Bill, the Council would probably find it unnecessary to make any change in its provisions; but he should like to wait another week for further replies to the circular which had been issued.

The motions were by leave postponed.

AMENDMENT OF THE EXCISE ACT, 1878.

THE HON'BLE MR. REYNOLDS moved that the Bill to amend "The Bengal Excise Act, 1878," be read in Council. He said that at the last meeting he explained the grounds upon which legislation was necessary; the Bill had since been printed and circulated, and he need only briefly refer to its provisions. The third section of the Bill contained a definition of "foreign exciseable article," which was drawn up in accordance with a representation which had been made by the Chief Commissioner of Assam. MR REYNOLDS mentioned at the last meeting that these foreign exciseable articles were of two kinds—first, spirituous liquors, which were imported into Assam from places in British India in which no excise law was in force; and secondly, wild ganja, which grew on the hills beyond British India, and was surreptitiously brought into Assam across the frontier. The 4th section of the Bill provided for the regulation of the traffic in such articles in accordance with the wish of the Chief Commissioner. Power was given to the Board of Revenue absolutely to prohibit the possession of such foreign exciseable articles in any quantity whatsoever in the districts or tracts specified in the notification, or to limit their possession to certain specified quantities. The 5th section provided for the difficulty which had been raised by the Board, by omitting the words "for sale" from section 58 of the Act.

The HON'BLE MR. DAMPIER said he observed in the Bill a provision to substitute, for the definition of "spirituous liquor" under the Act, the following words:—

"Spirituous liquor" includes any spirituous liquor imported into India by sea or manufactured in India by any process of "distillation." The only difference between this definition and that for which it was substituted lay in the introduction of the words "by sea," which had a restricting and not an extending effect, excluding from the definition all liquors imported otherwise than by sea. Perhaps the hon'ble mover of the Bill would explain the object of this change in the definition, which was not apparent to MR. DAMPIER.

The HON'BLE MR. REYNOLDS remarked that he did not remember at that time the exact reason why the words "by sea" were introduced in the amendment, but the point might be reserved for consideration in Select Committee.

HIS HONOR THE PRESIDENT said he thought the idea probably was to exclude spirituous liquors imported into British India from Native States. Liquors so manufactured and imported would be included in the definition of "foreign exciseable article" contained in the previous paragraph of the section, foreign exciseable article being there defined to mean any article manufactured or produced at any place beyond the limits of British India.

The HON'BLE MR. MACKENZIE said he believed that the reason for the introduction of the words "by sea" lay in the construction of the later penalty sections. The point could best be considered in Committee.

The motion was put and agreed to, and the Bill referred to a Select Committee consisting of the Hon'ble Messrs. Mackenzie, Allen, Peary Mohun Mookerjee, and the Mover.

AMENDMENT OF THE CESS ACT, 1880.

THE HON'BLE MR. DAMPIER moved that the Bill to amend "The Cess Act, 1880," be further considered in order to the settlement of its clauses.

The motion was agreed to.

The HON'BLE MR. DAMPIER said that since the last meeting of the Council two points had been brought to his notice. The first was in connection with the 42nd section of the Act. That section provided that cess might be paid at the time when rent was payable. He should not himself have suggested the introduction of the explanatory words contained in his first amendment, but that the necessity for such explanation had been suggested to him from two independent quarters. The revenue was due according to the instalments mentioned in the engagement, but, although the revenue was then due, payment of it was not required until a certain last date of payment which was fixed under the provisions of Act XI of 1859: all instalments which had become due before that last day of payment were bound to be paid by that last day, and not before, on penalty of sale of the estate. It was suggested that section 42 of the Cess Act was ambiguous, and that a question might rise whether payment of cess was bound to be made according to the periods fixed in the engagement for the payment of revenue, or by the latest day fixed by the Board of Revenue under Act XI of 1859. The object of the amendment was to declare that the latest day for the payment of cess was the date fixed "under the provisions of section 3 of Act XI of 1859, or of any similar Act at the time being in force for the payment of arrears." His motion therefore was to substitute these words for the words "for the payment of the instalments" in clause (1) of section 42.

The motion was agreed to.

The HON'BLE MR. DAMPIER said that his second amendment was suggested from the discussion which took place on his hon'ble friend MR. AMEER ALI'S amendment in section 44 of the Cess Act as to the separation of liability for payment of cess. As the Act stood, when a separate account was open for the payment of revenue, there was a corresponding separation of liability in regard to the payment of cess also. But, although the law provided for the closing of a separate account as regards the payment of revenue, the Cess Act did not provide for closing the corresponding account for the payment of cess in the same manner, and therefore MR. DAMPIER moved the addition to the Bill of the following section :—

"5A. To section 44, the following clause shall be added :—

'(5.) Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause 1 of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share.' "

The HON'BLE AMEER ALI said he thought the introduction of the proposed clause unnecessary. As long as a person continued to enjoy the privilege given him by Act XI of 1859 of separate liability for the payment of revenue, he would retain the similar privilege in respect to the payment of cesses conferred upon him by the first clause of section 44 of the Cess Act; but when

the separate account for the payment of revenue was closed, the privilege as to separate payment of cess must cease.

The HON'BLE MR. DAMPIER replied that the hon'ble member himself had in Select Committee let fall a remark to the effect that, as he read the law, when once a separate account had been opened as provided in clause 4 of the section, joint liability of the proprietors of the whole estate could never be resuscitated, and it was that remark which suggested the amendment now proposed of providing expressly for the closing of a separate account for the payment of cess.

The HON'BLE MR. REYNOLDS thought that, though the words might not be absolutely necessary, the addition of the proposed clause was desirable—it seemed to him to make the intention more unmistakeable.

HIS HONOR THE PRESIDENT observed that the proposed amendment would not make any alteration in the law. If there was room for doubt in the mind of hon'ble members, there was probably room for doubt elsewhere.

The motion was put and agreed to.

On the motion of the HON'BLE MR. DAMPIER the Bill was then passed.

The Council was adjourned to Saturday, the 26th instant.

Saturday, the 26th March 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE F. PRESTAGE,
The HON'BLE KRISTODAS PAL, C.I.E, RAI BAHADOOR,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE COURT OF WARDS ACT, 1879.

THE HON'BLE MR. DAMPIER presented the report of the Select Committee on the Bill to amend the Court of Wards Act, 1879, and in doing so he said there were only two points necessary to be noticed now. The minor alterations made by the Committee were sufficiently set out in the report. The first of the two points was the alleged discrepancy between the Indian Majority Act, passed by the Council of the Governor-General, and the Court of Wards Act of this Council. Before the matter was laid before the Select Committee an informal meeting was held, principally to discuss this question. It was purely a question of law, and it happened that, of the four legal gentlemen of whose assistance the Committee were able to avail themselves, two held one opinion as to the construction of a certain expression in the Indian Majority

Act, and these were the two law officers of the Government; while two held the other opinion. The expression in the Majority Act was "every minor under the jurisdiction of the Court of Wards." The opinion of the learned Advocate-General and of the Legal Remembrancer was that this expression in the Indian Majority Act embraced every minor upon whom that Court might stretch out its hands and take charge of his property, if, in the exercise of its discretion, it thought right to do so. If the view of these legal officers was correct, then the way in which the expression was used in the Majority Act had the effect of leaving the Court of Wards to declare whom they should consider to be minors for the purposes of that Act, and therefore there was no discrepancy between the two Acts and no alteration was required in the present Bill. On the other hand the two learned gentlemen opposite (Mr. Ameer Ali and Baboo Peary Mohun Mookerjee) were of opinion that the expression in question in the Indian Majority Act embraced only minors of whose person and property the Court had actually taken charge in the exercise of its discretional jurisdiction. If so, there was certainly some difficulty in reconciling the two Acts; but then this Council had not the power to clear up the doubt by putting an authoritative construction on the words of the Majority Act.

On these considerations, and giving that weight to the opinion of the law officers of Government, who happened to be agreed, which was officially due to them, the Select Committee had not thought it necessary to introduce any provision on this head into the present Bill.

The next point was that the Committee had omitted the proposed section 55A as unnecessary. It was the section by which MR. DAMPIER had proposed to give authority to the Court of Wards to allow any ward to bring a suit, as if that ward were not in charge of the Court. The consideration of this section led the Committee to look somewhat deeply into the general law, and the result was that it was held by those most competent to give an opinion, that, as the law stood, there was no necessity for a specific provision of the nature of the one he proposed; cases such as MR. DAMPIER had intended to meet were already met, Wards of Court, who are not minors, being already under the general law competent to institute certain suits independently of the Court of Wards, and the managers of their estate. That being the general effect of the law, it had not been found necessary to put in any provision to secure it.

He saw one point looming at a distance, regarding which he might perhaps have to propose an amendment. It was this. It had been represented that for the purpose of executing a certificate, the manager of a ward's estate was, under the Public Demands Recovery Act, in the position of a plaintiff decree-holder. Now, after a certificate had been made for the recovery of a certain sum due to the ward's estate, and before it was fully executed and satisfied, suppose the estate of that ward passed away from the jurisdiction of the Court, how was that certificate to be sued out? Who was then legally competent to take such steps as were necessary to go on executing it? That was a question which had been raised. He had in an informal way consulted two authorities on the subject—one said it was as clear as possible; the decree being made, the Collector could go on executing it even after the estate had

passed out of its hands, and the Collector would make over the amount realized to the proprietor who had come into possession of the estate. The other legal luminary said it was palpable that the proprietor in possession of the estate was the successor in title to the manager, and that, under the general law, he would be entitled to take such steps as were necessary for executing these certificates.

This was purely a legal question, and MR. DAMPIER did not like to rush in where the angels feared to tread, and he proposed to give the subject further consideration and to obtain more formal opinions before the next meeting of the Council.

The HON'BLE PEARY MOHUN MOOKERJEE said he had the honour of serving on the Select Committee, but he regretted that he could not agree with the learned law officers of the Government, or the majority of the hon'ble gentlemen of the Committee, in thinking that the Court of Wards Act, or the Indian Majority Act, gave the Court of Wards anything like a prospective jurisdiction with respect to persons who had passed the age of eighteen years and had not completed the age of twenty-one years. He thought that the standards of majority, fixed by the two enactments, related to classes of persons differently situated, and that they did not conflict with one another; but as the majority of the gentlemen who formed the Select Committee were of a contrary opinion, he subscribed to the report of the Committee. But, since signing the report, he had consulted the authorites on the subject, and he had been confirmed in his opinion by the rulings of the highest authorities, he meant of the Privy Council and of a full Bench of the High Court. He thought that a person after he had attained the age of eighteen years was beyond the jurisdiction of the Court of Wards. He stated this simply because he wished it to be understood that he did not subscribe to the opinion expressed in the 2nd paragraph of the report of the Select Committee.

The HON'BLE AMEER ALI said that, as he had the honour of serving on the Select Committee, he might be allowed to say a few words to explain the dissent he had recorded. The reasons which compelled him to differ from his hon'ble colleagues were contained in his dissent, and he was not going to trespass at any length on the time of the Council. He was sorry to find the opinion of the law officers of Government were against him with reference to the meaning which was to be attached to the words "under the jurisdiction of the Court of Wards" in section 3 of the Indian Majority Act. They were of opinion that these words vested in the Court of Wards a prospective jurisdiction, and that consequently there was no conflict between the provisions of Act IX of 1875 and the Court of Wards Act The opinion of the law officers of the Government was entitled to the greatest weight, but he (MR. AMEER ALI) could not bring himself to agree in the view that the word "jurisdiction" in the Indian Majority Act had a different meaning from the word as used in other Acts. He thought a reference to some of the authorities mentioned already by his hon'ble friend (Baboo Peary Mohun Mookerjee) would show that in every instance in which the question had been discussed the term had been construed to imply an actual and not a prospective and possible jurisdiction.

The Hon'ble Mr. Dampier.

His hon'ble and learned friend the Legal Remembrancer had mentioned to him that in section 11 of the Court of Wards Act and Act XL of 1858 the word was used in the sense which Mr. Allen was inclined to put upon it, but a careful examination of the sections referred to by him had confirmed MR. AMEER ALI in his conviction that the words "under the jurisdiction of the Court of Wards" meant under the actual jurisdiction or charge of the Court of Wards, and did not include persons who had attained their majority under Act IX of 1875. The analogy which was sought to be drawn from the expression "jurisdiction of the civil court" did not appear to him to be correct. The jurisdiction of the civil court was an actual jurisdiction, exercised with reference to all persons and at all times. Everybody was subject to that jurisdiction unless specially exempted, whereas nobody was subject to the authority of the Court of Wards unless specially declared to be so, or the charge of his or her property was taken by the Court of Wards.

The HON'BLE KRISTODAS PAL said, lawyers, like doctors, differed; he did not profess to be a lawyer, but, as a Member of the Select Committee, he took a common-sense view of the question raised. If there was a conflict between the law of the Indian Council and the Court of Wards Act, it was not in the power of this Council to remedy that conflict. The Select Committee had not touched the law one way or another, and had not therefore in any way added to the difficulties which might be at present experienced. Such being the case, he thought the paragraph which had been inserted in the report of the Select Committee would not in any way alter the present position of things. If the Government, in its executive capacity, thought that the two laws ought to be reconciled, it should move the Legislative Council of the Governor-General to amend the Majority Act. But in his opinion it was not competent for this Council to do anything in the matter.

The HON'BLE MR. DAMPIER said, with reference to remarks which had just been made, that he entirely agreed with the hon'ble member who spoke last.

He observed that the hon'ble and learned member who spoke first said more than once that one of the constructions of the Indian Majority Act was held by the majority of the Members of the Select Committee, as well as by the law officers of Government. MR. DAMPIER begged leave to say that he had in this matter pinned his official faith on the opinion of the Government law officers.

He was satisfied that, whichever of the two constructions was correct nothing that this Council was competent to enact would be of practical use. Any conclusion which he might arrive at as to the correct construction must therefore be a sterile conclusion, leading to no results. He had not therefore thought it necessary to examine the merits of the rival constructions as he would have done had any result depended upon his vote.

The HON'BLE MR. ALLEN said, as one of the Members of the Select Committee, and particularly as one of those by whose advice it acted, he thought it right to state why that Committee had determined to make no change in the Bill in respect to the matter under discussion, and the explanation lay in the answer to the question—who was a minor under the jurisdiction of the Court

of Wards? The difficulty arose not as to the meaning of any words in any Act passed by this Council, but as to the meaning of words used in the Indian Majority Act of 1875, which was passed by the Council of the Governor-General. The words of section 3 of that Act were—

"Subject as aforesaid, every minor of whose person or property a guardian has been or shall be appointed by any court of justice, and every minor under the jurisdiction of any Court of Wards shall, notwithstanding anything contained in the Indian Succession Act, or in any other enactment, be deemed to have attained his majority when he shall have completed his age of twenty-one years and not before."

The question was as to the meaning of the words "under the jurisdiction of any Court of Wards." The learned Advocate-General's opinion (and the only opinion which seemed to MR. ALLEN the correct opinion) as to the construction of these words was that a distinction must be drawn between the words "under the jurisdiction of the Court of Wards" and the words "under the charge of the Court of Wards." The opinion maintained by his friends on the opposite side appeared to him to depend entirely on the loose way in which the word "jurisdiction" was used in this country. Every person who had any functions to perform was said to have a "jurisdiction," and thus we heard of a dâk-runner's "jurisdiction" and a chowkidar's "jurisdiction," and other "jurisdictions" of a similar kind in which the word was used in a most slovenly manner. But the exact meaning of the word was to signify, prospectively, a possible control, thus every person was under the jurisdiction of that court which had the *dictio juris*—the right of declaring what was *jus* in cases in which he was concerned; therefore the jurisdiction of the Court of Wards must extend to those persons over whose affairs the court had a *dictio juris*, that is to say all those minors who held entire estates paying revenue direct to Government. The qualification therefore was that of every minor zemindar holding an entire estate, whether his property had or had not been taken charge of, he was under the jurisdiction of the Court of Wards: and consequently the Committee could see no conflict between an Act of the Governor-General, which expressly, in the case of persons under the jurisdiction of the Court, extended the age of majority to twenty-one years, and an Act of this Council which stated that in the case of those subject to the Court of Wards, a minor was a person under twenty-one years of age. The expression "under the jurisdiction" occurred in another Act of the Governor-General in Council, namely Act XL of 1858, which made provision for the custody and protection of the property of minors not under the jurisdiction of the Court of Wards, and who did not hold entire estates paying revenue to Government. Section 2 of that Act provided that the care of the persons of all minors (not under the protection of the Court of Wards) and the charge of their property should be "subject to the jurisdiction of the civil court." The expression in that section was almost identical with the expression in the Indian Majority Act, but MR. ALLEN never heard that the section was supposed to refer merely to persons whose property had been already taken charge of by the civil court: clearly, it contemplated the possibility of the property being taken charge of by the court, and not necessarily that it had been actually taken under it. It was not advisable

to explain the meaning of the words in question by reference to an Act of this Legislature, because it might be said that it was not competent for this Council to amend or explain an expression used in an Act of the Council of the Governor-General. But a case had just been put in his hands which was relied upon by the hon'ble member opposite as giving the opinion of the Privy Council, to the effect that the age of majority for all minors must be taken at eighteen years.* The point of the decision on which reliance was placed appeared to MR. ALLEN not to affect this question at all, except in a very remote way, and even there their Lordships of the Privy Council drew a distinction and based their decision on the express words of a Regulation. They said,—

* *Jumoona Dassya* vs. *Bamasoondari Dassya* I L. R. 1 *Calc.* 289—295

"The only remaining point was that taken by Mr. Doyne, to the effect that, although Govind Chunder may have been of the age of discretion according to the Hindu law as prevailing in Bengal, he was still a minor under the 2nd section of Regulation XXVI of 1793, and that under the 33rd section of the prior Regulation, X of 1793, he could not make the adoption without the consent of his guardian. The last-mentioned enactment prohibits a disqualified proprietor from making an adoption, except with the sanction of the Court of Wards, and it has been determined by the sudder court in the case cited—*Anundmoyee Chowdrani* vs. *Sheeb Chunder Roy*—(1) a case which afterwards came here, though not on the same point, (2) that the prohibition applies equally to an authority to adopt and to an actual adoption. But the words of the 33rd section of Regulation X of 1793 would seem to confine its operation to persons who are under the guardianship of the Court of Wards."

(1) S. D. A. (1855), page 218
(2) Section 9, Moore's I. A., 287.

This objection was overruled it is true, but the basis of their Lordships' opinion was that section 33 of Regulation X of 1793 limited the incapacity to those who were under the *guardianship* of the Court of Wards, that is to those whose property was in charge of the Court of Wards, and to whom the Court of Wards stood in the place of guardian. The judgment went on—

"And we have the judgment of Mitter, J., to the effect that, where a minor is not under the Court of Wards, but has attained years of discretion according to the Hindu law, he is capable of executing such an instrument as this. *Rajendra Narain Lahooree* vs. *Saroda Soondaree Dabee* (3) If, then, the case actually turned upon this point, their Lordships' opinion would have been that Govind Chunder was not incapacitated from executing this instrument by reason of his not having attained the age of eighteen years."

(3) 15 W. R., 548

The question was not then the validity of the adoption, but whether a disqualified landholder could execute an instrument giving power to adopt, and the Privy Council, in thinking that he could, relied on the words of Regulation X of 1793, which limited the prohibition to adopt to those persons who were actually under the guardianship of the Court of Wards. There therefore did not appear to MR. ALLEN to be any difficulty as to the meaning of the words "under the jurisdiction of the Court" in the Indian Majority Act, and even if there was, he did not see how this Council could in any way remove the obscurity, unless, indeed, it should declare that eighteen years was to be the age of majority of minors under the Court of Wards. But, as he had already said, he did not think there was any ambiguity in the words of the Indian

Majority Act, and he thought it very desirable that the age of majority for proprietors of estates paying revenue direct to Government should not be reduced under twenty-one years.

AMENDMENT OF THE EXCISE ACT.

THE HON'BLE MR. REYNOLDS presented the report of the Select Committee on the Bill to amend "The Bengal Excise Act, 1878." He said he did not propose at this meeting to ask the Council to take the Bill into consideration. He would only mention that he had since received a communication, from which he found that the Board were not thoroughly satisfied with the 4th section of the Bill as it stood, and it was possible that at the next meeting of the Council he should have to propose some amendment of that section.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

THE HON'BLE KRISTODAS PAL presented the report of the Select Committee on the Bill to amend "The Calcutta Municipal Consolidation Act, 1876." and in doing so he said the modifications made by the Select Committee were fully set forth in the report, and he need not therefore trouble the Council with a detailed statement of the alterations made. It had been his misfortune to differ from his colleagues on some important points, but he would take an opportunity to notice them when the Bill would be brought up for settlement of its clauses. There were, however, one or two points which he might now notice. One of the most important objects of the Bill was to give power to the Commissioners to take up land for the reclamation of bustees. When he applied for leave to introduce the Bill, he endeavoured to explain the procedure under which a bustee might be reclaimed by the Corporation under the existing law. That procedure, he might say, was twofold. First, the Commissioners were required to serve notice on proprietors of land, calling upon them to carry out certain improvements which might be recommended by their Sanitary Officer; these proprietors might be required to make roads within bustees for the admission of conservancy carts, to introduce drainage and water-supply, to lay out huts in proper order, and to make other sanitary arrangements. If the proprietors did not carry out the orders of the Commissioners, they were competent to carry out such improvements at the expense of the Municipality and to recover the expense afterwards from the owner. That was one procedure. The other mode of procedure was very much the same, with this difference, that the scheme of improvement was not to be brought into operation till the condemned bustee had been reported upon by two competent independent medical gentlemen. If the Health Officer reported a bustee to be particularly unhealthly, and if the Commissioners thought fit, they might call upon two independent medical men to report on the bustee. These gentlemen were required to set forth a scheme of improvement which might partially or wholly be adopted by the Commissioners, who were competent to require the owner to carry out all the improvements they might order. If the owner neglected to carry out the improvements, the Commissioners were competent to carry

them out and to recover the cost from the owner. The expense might be so heavy that, perhaps in some cases, the proprietor of the bustee might not be able to meet it. It had therefore been considered hard to enforce the Act in cases in which the owner might be too poor, or might find the undertaking to be unremunerative. The best course in such cases, he thought, would be for the Municipality to take up the land and pay proper compensation to the proprietor. As BABOO KRISTODAS PAL had mentioned to the Council on the occasion he had referred to, he had pressed this point on the Council when the Municipal Act of 1876 was under consideration, so this was not the first time he ventured to bring the subject before the Council. At that time it was thought that the extensive powers given to the Commissioners by the Act might first be tried, and if they were found to be insufficient, they might be subsequently extended. When introducing the Bill, he read to the Council an extract from a letter of the Government, in which His Honor the present Lieutenant-Governor recommended that the Commissioners might take up land for the improvement of bustees, and sell or lease it as they thought fit in order to recoup themselves. The Commissioners had also come forward with the same suggestion in a letter to the Council, and accordingly provisions had been introduced in the Bill to give the Commissioners the necessary powers. The Select Committee had, however, so hedged in the provision as to prevent the Commissioners from arbitrarily exercising the power or embarking in land speculation. The amended Bill provided that no unhealthy area should be taken up by the Commissioners unless independent medical testimony was obtained as to the unhealthiness of the locality concerned. The bustee must be first reported upon, specially by two competent medical men, before it could be included in any scheme of improvement by the Commissioners under the provisions of the Bill; the Commissioners would then consider the scheme of improvement recommended, and lay it before the Lieutenant-Governor for consideration and sanction, and, after obtaining such sanction, might take measures to acquire the land. Within two years of the acquisition of the land, the Commissioners should either carry out the scheme of improvement at their own expense, or make arrangements for carrying out the improvement by other persons. And within five years from the time of the commencement of the improvement, and seven years from the date of purchase of the land, the Commissioners must sell the land unless the time was extended by special order of the Lieutenant-Governor; so that the Commissioners would not be competent to hold the land they might purchase for the profit of the Corporation. This provision of the Bill would act as a check upon the acquisition and improvement of land, for, as fast as the Commissioners might acquire or improve any land, they would be bound to sell it; they must not hold land for the pecuniary benefit of the Corporation. The object, as he had stated before, was simply to assist the Municipal Corporation in carrying out more effectually the reclamation of bustees. This provision, BABOO KRISTODAS PAL hoped, would be doubly beneficial. In the first place it would assist the Commissioners in carrying out sanitary improvements; in the next place it would help proprietors of bustees, who might not have the means

of carrying out improvements of large magnitude; they would receive fair and sufficient compensation for the land they possessed, but which they were not able to improve. He thought these sections, on the grounds he mentioned, were fair and equitable to all parties concerned, and most important from a sanitary point of view.

The next section to which he would refer was the section about drug shops. He believed there was no difference of opinion on the point that there ought to be some provision for the proper regulation of shops where medicinal drugs were exposed for sale. The Bill provided for the proper registration of drug shops; next, for their proper supervision by the Health Officer of the Town; and thirdly, for the employment of certificated compounders for the dispensing of medicines in those shops. It had been pointed out to him that, as the section had been worded, it would include Indian drugs which were used for the preparation of indigenous medicines, and if certificated compounders were insisted upon for the sale of such drugs, it would offer serious impediment to trade and to the indigenous system of medicine. In order to meet this objection, the Committee had inserted the words "drugs recognized in the British Pharmacopœia, not being also articles of ordinary domestic consumption." It, however, happened that Indian drugs had been included in the British Pharmacopœia which were not articles of domestic consumption; other drugs were also included which were used both for domestic consumption and medicinal purposes in this country. It would be very hard if, by any words in this section, the trade in Indian drugs should be fettered in any way. These drugs were very cheap, they were sold by small druggists, they were used by Indian Kobirajes and Hakeems, and most of them were comparatively innocuous, and if any obstacle were thrown in the way of the sale of such drugs, it would be a serious inconvenience to the public. BABOO KRISTODAS PAL would therefore take the opportunity, when the clauses of the Bill would come up for consideration, to ask the Council to consider whether some explanation should not be attached to the section which might exclude from its scope drugs which might be used for indigenous medicine.

He need not notice the other amendments made by the Select Committee, because they were more or less explained in the report; he would now present the report, leaving the detailed consideration of the clauses of the Bill for the next sitting of the Council.

APPOINTMENT OF A BURIAL BOARD FOR CALCUTTA AND ITS SUBURBS.

THE HON'BLE MR. MACKENZIE moved that the Bill to provide for the appointment of a Burial Board in Calcutta and its Suburbs be considered for settlement in the form recommended by the Select Committee. He had, with the permission of the President, last week, postponed this motion in order to give time for the receipt of further communications to the circular which had been issued. He had during that time received several further replies, and he was happy to say that two of the largest bodies interested—the Roman Catholic community and that of the Church of England—were entirely

satisfied with the provisions of the Bill as they stood. Practically, he might say, that the Non-Conformists, as far as he had been able to discover, were also satisfied. One or two suggestions had been thrown out, but he did not consider it necessary to make any change in the substance of the Bill in consequence of those suggestions. As the Bill was worded, there was nothing in the section providing for the constitution of a Burial Board to compel the Lieutenant-Governor to appoint only laymen as additional members; it was quite open to His Honor to appoint either laymen or clergymen. That met one objection which had been taken by his correspondents. Another point was this. It was suggested that Non-Conformist bodies should be allowed to elect their own representatives. That, however, appeared hardly practicable, for the Government had no definite knowledge of the number of bodies who claimed to be represented; it would be difficult to lay down rules for the conduct of elections, and, on the whole, it would probably be found best that the power of appointment be left with the Lieutenant-Governor, who would consider the interests of the leading bodies and choose men who might be considered fairly representative. Another suggestion, which had been made, was that all the Government burial-grounds should be placed under the Board. The intention was that all such burial-grounds should be placed under the Board, but the Bill had been made discretionary, because new burial-grounds might be opened out which it might not always be convenient to place under the Board. Therefore MR. MACKENZIE thought that on this point also there should be a discretion left to the Government. The only other suggestion which had been made was as to section 10. Several gentlemen had suggested that all private burial-grounds ought to be brought compulsorily under the jurisdiction of the Board. The Government had not heard how such a provision would be received by the proprietary and managing bodies concerned; and here also MR MACKENZIE thought it would be best that the Bill should be left open On the whole, therefore, he did not see any reason to ask the Council to make any change; but in section 3, he would move to insert, after "Senior Chaplain of St John's," the words "Church in Calcutta."

The motion was put and agreed to.

On the motion of the HON'BLE MR. MACKENZIE the Bill was then passed.

The Council was adjourned to Saturday, the 2nd April.

Saturday, the 2nd April 1881.

PRESENT:

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL, *Presiding*,
The HON'BLE G. C. PAUL, C.I.E., *Advocate-General*,
The HON'BLE H. L. DAMPIER,
The HON'BLE H. J. REYNOLDS,
The HON'BLE H. A. COCKERELL,
The HON'BLE A. MACKENZIE,
The HON'BLE T. T. ALLEN,
The HON'BLE PEARY MOHUN MOOKERJEE,
The HON'BLE KRISTODAS PAL, RAI BAHADOOR, C.I.E.,
and
The HON'BLE AMEER ALI.

AMENDMENT OF THE COURT OF WARDS ACT.

ON the motion of the HON'BLE MR. DAMPIER, the report of the Select Committee on the Bill to amend "The Court of Wards Act, 1879," was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee. He said that, since the last meeting of the Council, he had sent copies of the Bill as it stood to a few Commissioners and Collectors with a view to its being carefully considered before it was finally passed. The result showed that there was nothing of any importance required, but suggestions had been received of a few verbal amendments which he would now proceed to move.

The first of these was in section 1. This being a short amending Act, no short title was required, and the words from "may be called" in line 1 down to the word "it" inclusive in line 4, were omitted.

In section 4 an amendment was made so as to provide for the insertion of the word "sale" before the word "proceeds" in the proviso to clause 1 of section 23 of the Wards Act, and in lines 7 and 8 of clause 2 of the same section, for the words "and all arrears of rent" the words "cesses and other demands and all arrears thereof" were substituted. As the Act stood, when the Collector attached an estate for the recovery of any sum due at the time of releasing the estate from the protection of the Court of Wards, he was empowered to recover only rent and arrears of rent; the amendment would empower him to recover all cesses and other demands recoverable as arrears of revenue.

Further amendments were made in the same section by the substitution in the proviso to clause 2, line 2, of the word "attached" for the word "farmed," and the omission of the words "of such farm" in line 3. The proviso as it stood laid down what was to be done with the proceeds of attached estates if let in farm, but there was no provision as to the mode of proceeding if the estate was managed by the Collector direct; this amendment was to correct that defect.

Verbal amendments were made in sections 5 and 6 of the Bill.

Section 9 was a new section, giving power to the Collector to call for accounts and papers from a farmer within six months after the expiry of the lease; but it had been brought to notice that very often it was made a condition that the farmer should file a jummabundi every year, and it was represented that it would be very inconvenient if, under the law, the farmer could only be called upon to file accounts and papers after the expiry of his lease. It was therefore proposed to confer the power of calling for accounts and papers "at any time during the currency of the lease or" within six months, &c., and the opportunity was taken to make amendment further down the section by repeating the words "accounts, documents, or papers" in lieu of the word "information" which had crept in by a clerical error.

The HON'BLE MR. DAMPIER then moved that the Bill as amended be passed.

The HON'BLE MR. ALLEN said that, before the Bill left the Council, he wished to add a few words on the subject of the discussion which took place at the last meeting of the Council. The fact of his hon'ble friend the mover having disclaimed any opinion of his own on the subject appeared to impose an additional obligation on MR. ALLEN to justify the opinion which he then gave. He must admit that at that time the force of his hon'ble friend's words did not strike him. It was only on seeing the *Gazette*, and finding Mr. Dampier's official faith pinned to him, that he felt the responsibility which the hon'ble member had cast on him. Further, the misapprehension which had been given expression to by the hon'ble gentlemen opposite appeared to be very widespread and not confined merely to those in Calcutta—persons who had been whetting their ingenuity over the circumstances of a particular case. He had lately had a visit from a mofussil pleader, and evidently the opinion considered to be undoubted was that which the member opposite gave expression to; and furthermore, it was not a matter of pure theory, but one of very important practical effect. This pleader mentioned a case with the circumstances of which it was unnecessary to trouble the Council, but which had reference to the disposal of a very large property, and the advice which was then given was entirely based upon that view of the age of minority. Now, on the last occasion, MR. ALLEN'S remarks were very much in the nature of verbal criticism, and he travelled no further than the section itself. But these circumstances led him to look more deeply into the matter, and to go back to the history of majority legislation. The Majority Act of 1875 provided two distinct periods for two distinct classes of persons,—one at the age of 18 and the other of 21. Now, according to the opinion MR. ALLEN was combatting, the distinguishing and determining circumstance which was to decide the class of these two to which any particular person belonged, lay in the fact whether, at the time of attaining the age of 18, the minor was already under the protection of the Court of Wards or not. If he were already under the protection of the Court of Wards, it was admitted that the minority continued till the age of 21, but if the minor had not been taken under such protection, he became, it was said, a major immediately; he was entitled to defy the Court of Wards to spend his money in any way he pleased, and to ruin himself as fast as he liked. Thus, if at the time

of his father's death, a minor was of the age of 17 years and 11 months, if the Collector of the district was vigilant and seized the estate immediately, the minor became incapacited for three years. If, on the other hand, the minor managed to conceal his father's death, or the father died a month later, that minor became *sui juris*. Thus the three years' civil incapacity was made to turn upon the merest accident which had no reference to the mental or moral maturity of the subject, or the responsibilities or dangers he was exposed to. The mere fact of having been a single week under the protection of the Court was, as it were, to carry with it by law the taint of three years' incapacity. This was simply to treat the Court of Wards as if it were a plague-stricken port, the entering of which for the most temporary shelter involved civil quarantine for three years. Now, could it be supposed that any Legislature would attach such consequences to coming under its own Court's protection? It might be true that the Court of Wards had enemies who made light of the training and education which it afforded, but a provision of this nature, however effective as a piece of cruel irony, would be altogether out of place in an Act of the Legislature; and any interpretation which involved such a conclusion carried its own condemnation with it. But the past history of the legislation on majority led to the same opinion. In 1793, when the Court of Wards was established, 15 years was taken as the period at which a minor became competent to manage his own property. This was simply accepting what was supposed to be the Hindu and Muhammadan law on the subject; but inconvenience was very soon experienced in making that the age of majority, and by Regulation XXVI of 1793 the Legislature postponed the period of majority for three years In the preamble to that Regulation, the reasons which induced the Legislature to do so were sufficiently set out in language of the most sober and weighty kind. For proprietors of entire estates paying revenue direct to Government, the age of majority was fixed at 18 years, but for others no special period was appointed, and they remained, under the general Hindu and Muhammadan law, minors till the age of 15. Act XL of 1858 took their case into consideration, and enacted that all such as were not already protected by the Court of Wards were to attain their majority at the age of 18. MR. ALLEN was aware that there had been in early years diversity of decisions as to the effect of this Act, and that the view taken in the Bombay Presidency appeared to be different from the view taken here, but the question was finally settled by a Full Bench decision of the High Court of Calcutta in 1871, 1 B. L. R., 49. The argument then put before the High Court was very much the same as that which had been put forward in this Council with reference to the Court of Wards jurisdiction. The dispute then was as to the effect of Act XL of 1858, and it was contended that that Act only provided for those who had already come under the control of the civil court, and that, if they had not been brought under the control of the civil court, they attained their majority at the age of 15. The argument which the hon'ble member opposite maintained on the present occasion with respect to the Court of Wards jurisdiction was stated by the then Chief Justice Sir Barnes Peacock in the form of a question, thus: "Then can it be said that

being a minor, subject to the jurisdiction of the civil court, he is not a minor unless proceedings are taken in the civil court for the protection of his property or for the appointment of a guardian?" The Full Bench decision is the answer to that question. MR. ALLEN would not pretend to give in his own words the effect of that decision, but the question was afterwards raised again in the High Court, when Mr. Justice Phear said: "By that Full Bench decision I understand it to be now settled that in the mofussil, at any rate, all persons (with certain exceptions) who have not attained the age of 18 years are under the disability of minority." Such was the state of the law when the Majority Act of 1875 was introduced, and it would be seen, on referring to the proceedings in the Governor-General's Council in reference to the passing of that Act, that at the time no intention to change the principle of the law was manifested by any person. A very strong opinion was expressed that for all minors of all classes the period of majority should be 21, but for various reasons the Select Committee determined not to adopt this age. They expressly put it that their reason for doing so was that they apprehended there were two classes of minors—one whose majority was attained at the age of 15, and the other at the age of 18; and they feared that a change from 15 to 21 was too great a leap to be taken at once. Therefore they confined themselves to deferring the period of majority in each case by three years. He quoted from Mr. Hobhouse's speech in presenting the report of the Select Committee. Having discussed the proposals made, Mr. Hobhouse summed up in this way: "It was found that after the introduction of the Bill there was only one serious subject of controversy, and that was whether the age of majority should be fixed at 18 or at some later age. We were recommended in a great number of influential quarters to postpone the age to 21, and were referred to many cases in which injury had occurred to young men by reason of their becoming masters of their property at too early an age. So it happened that, when we came to discuss these papers, the object of uniformity seemed to be less important than the object of framing a law suitable for the needs of Indian Society, and we found that if we prolonged the non-age of those who were wards of Court, though we should not altogether follow the recommendations of those who advocated the age of 21, yet we should substantially satisfy their reasons and meet the cases of mischief which they adduced, while at the same time we should avoid so large a change as would be caused by altering the age from that of 15 years or less to that of 21. The broad result is that, setting apart the cases of successions and of European British subjects, we have provided that those who are now minors up to 18 shall remain so up to 21, and that others shall attain their majority at 18." The effect was simply to defer by three years the age of majority in each case.

Madhusudan Manji versus *Debi Gobinda Newgi*, 1 *B. L. R (F.B.)* 49-54.

Jadunath Mitter versus *Bolye Chand Dutt*, 7 *B. L. R*, 607 610.

When we came to examine what were the distinguishing circumstances which marked the particular law under which any particular person was to fall, it would be found that it was made in every instance to turn upon the question of the possession of property. The preamble to Regulation XXVI

of 1793 distinctly put it upon the responsibility and dangers to which minor zemindars were exposed at the early age of 15 years. That principle was also accepted by the Legislature in 1875, and in continuation of his speech, Mr. Hobhouse observed that, as a fact, no direct inconvenience would follow their refusal to make 21 the age of majority for all, because the richer classes were the only ones who would ever have occasion to appeal to the Majority Act practically, and that, in providing the age of 21 years in their case, the Council were meeting the whole difficulties which were likely to arise. Mr. Hobhouse said—

"But here it seems to me that we walk on thoroughly safe ground. We are dealing with a class whose non-age, if their fathers are not living, is already prolonged beyond that of their neighbours, or liable to be so prolonged by a simple application to a court of law."

Mr. Hobhouse, at all events, supposed that they were covering not merely those who were already under guardianship, but those who might be brought under guardianship by a simple application to a court of law. From first to last the Legislature had, in determining the period, considered, first, the probable capacity of the minor; and secondly, the responsibility which he was likely to have to undertake, and according to those principles, and not any mere accident as to whether he was already under the protection of the Court or not, the point was determined.

Such being the state of things as provided for by the Majority Act, MR. ALLEN now came to the present Court of Wards Act. It provided that, for the purposes of the Act, every person under the age of 21 years was a minor. He thought it was not open to the Council to modify that section in any way. The Majority Act provided specially for those under the jurisdiction of the Court of Wards, and this Council could not do otherwise than make 21 years the age of majority for the purposes of the Court of Wards Act. On the last occasion he suggested that the only way to escape the supposed difficulty, if there was a difficulty, would be to reduce the age of majority to 18 years in the Wards Act, but he now retracted that remark, for, by doing so, this Council would then indeed be going against the Majority Act. If the Wards Act declared "minor" to mean every one under 18 years, it would thus declare a ward reached majority at 18 years; while the Majority Act itself distinctly provided that (even according to the view of his opponents) a ward should reach majority at 21 years, *and not before*. To make such a provision would be indeed *ultra vires* of this Council. But the practical question involved in and underlying all this was whether one whom the Wards Act declared a minor, he being under the age of 21 years, might dispute the control of the Court of Wards if he had attained the age of 18 before the Court had assumed the right of guardianship over him. The Wards Act legally bound every person in Bengal, and if any person was so ill-advised as to attempt to go into the civil court to shake off that control, his only possible chance of success would be by inducing the Court to declare that this Council had no power to fix 21 as the age of majority for minors subject to the jurisdiction of the Court of Wards. It was true that the courts in this country had

from the commencement lent too ready an ear to the argument of *ultra vires*, and had been so indiscreet as not to confine the acceptance of the argument to cases in which orders of the Executive Government were impugned, but had also applied that principle to render void Acts of the Legislature; but in every case in which an Act of the Legislature had been declared to be *ultra vires*, he believed it would be found the Superior Court had set things right. In no one case had this argument, at least as regards legislative Acts, been upheld; and if any ward or any minor should go into Court to press this argument, it would not be the Court's duty to be astute to discover that there was conflict between the two Legislatures, and further, any Court would doubtless give full effect to the consideration that the minority had been extended to 21, not for the destruction, but for the protection of the ward. The only result which MR. ALLEN could anticipate from a ward coming into court for any such purpose would be that by so doing he would furnish an additional illustration of his incapacity and undue readiness to be led away by evil advisers, and thus justify the act of the Legislature which had deferred his majority to the age of 21 years; but as to the result of any such application, MR. ALLEN did not suppose there could be the smallest doubt. The Supreme Government had already considered the Court of Wards Act of this Council, it had accorded its sanction to it, and it would not have done this if it was in reality in opposition to an Act of its own Council. But so far from the Wards Act being in opposition to the Indian Majority Act, it was only in the Court of Wards Act that the intention of the Supreme Legislature had received its complete accomplishment. These remarks, in an insufficient and feeble manner, he admitted, covered arguments which yet he believed could never be controverted.

The HON'BLE THE ADVOCATE-GENERAL said that on the last occasion on which this question was considered he was absent from the Council, but the hon'ble mover of the Bill correctly represented the Advocate-General's opinion which was entirely in consonance with that which had been expressed by Mr. Allen. The ADVOCATE-GENERAL was glad to observe that Mr. Allen had further confirmed that opinion by a considerable amount of research in tracing the history of the Act itself. The opinion which the ADVOCATE-GENERAL had formed at one of the consultations of the Select Committee was one as to which he was perfectly clear, and he did not think any reasonable doubt existed as to the meaning of section 3 of Act IX of 1875. The words "under the jurisdiction of any Court of Wards" made it perfectly clear that it was entirely unnecessary, for the purposes of section 3, that the minor should be actually under the protection of the Court of Wards, or that his estates should be vested in the Court. An infant under the English law was always under the jurisdiction of the Court of Chancery, although his property had not been taken possession of by the Court nor a guardian appointed. It could not be disputed that he would continue under the Court of Chancery until he had attained the age of 21. The attempt at present made, if successful, would be a retrograde movement to the state of things which existed before Act IX of 1875 was passed. The ADVOCATE-GENERAL remembered very distinctly giving a great

deal of time to the consideration of the matter in consultation with Mr. Clarke, the then Secretary in the Legislative Department, and it was because section 3 of the Indian Majority Act used the expression "under the jurisdiction of the Court of Wards," that it was determined to frame the section in the Wards Act as had been done, namely, that a minor should, for the purposes of the Act, be a person under the age of 21 years. The Wards Act was drawn so as to make the two Acts read together. He did not think that any reasonable doubt existed as to the construction of the Act, and even if it did, he did not think this Council could in any effective manner interfere with the provisions of section 3 of the Majority Act, and if his hon'ble friends thought that the word "jurisdiction" in that Act meant something different to the construction put by the Legal Remembrancer, they must go to a court of law for an authoritative interpretation of the meaning of the Act. There was a great case pending a short time back in regard to which, if the opinion entertained by the learned Legal Remembrancer and himself and the majority of the Committee was wrong or defective, proceedings would have been taken to set the matter right. He was not at liberty to mention the case further; but he knew that in that case sufficient and careful legal advice was taken on the subject. As far as he could see, there did not appear to be the smallest doubt that the opinion which had been expressed by MR. ALLEN was perfectly correct, and he thought this Council was greatly indebted to the hon'ble gentleman for the able manner in which he had this morning given expression to his views.

The HON'BLE AMEER ALI said that, as he had recorded a dissent to the report of the Select Committee on the Bill to amend the Court of Wards Act, he felt bound to say a few words after the remarks which had fallen from the learned Legal Remembrancer and the Advocate-General. He was under the impression that this question had been dropped and would not be raised again. He had merely mentioned the difficulty because it had suggested itself to him and to other professional gentlemen. He wished to assure hon'ble members that nothing was further from his intention than to reduce the age of majority; on the contrary, he would make the age uniform with reference to all persons, and remove the difficulty in that way. Instead of allowing the age of majority to fluctuate from 18 to 21, depending upon the circumstance whether a person was possessed of estates paying revenue to Government or not, he would have a uniform rule substituted in respect of all persons. But the question which he had raised involved a practical difficulty which had its origin from a conflict of words in the two Acts. He did not wish to enter into a technical discussion on the subject, and he was obliged to his learned friend for going into the history of legislation as to the majority of minors. But the question remained—what meaning was to be attached to the words "jurisdiction of the Court of Wards?" He was bound to attach the greatest weight to the opinion of the Government law officers, but he wished to suggest one difficulty which had occurred to him as to the meaning of the word "jurisdiction." The hon'ble gentlemen seemed to think that the meaning to be attached to the expression implied a prospective jurisdiction. He did not suppose they contended that the jurisdiction of the Court of Wards was a larger jurisdiction than the jurisdic-

The Advocate-General.

tion of the civil courts. He did not think it could be contended that, under the Indian Majority Act, the civil court could appoint a guardian *ad litem* to a person who had attained the age of majority; but if his learned friend's opinion was correct that the Court of Wards could take possession of the estate and appoint a guardian to a person who had not completed 21, but had attained the age of 18, it seemed to MR. AMEER ALI that if such a person could be reduced to the jurisdiction of the Court of Wards, then that Court had a larger jurisdiction than the civil court. That, he believed, would reduce the whole contention to an absurdity. Then there was another question. If it was contended that the civil court had the same jurisdiction as the Court of Wards, then it would follow that a person would be subject to two concurrent jurisdictions the whole time, and if he was subject to the jurisdiction of the Court of Wards until the age of 21, then the law of limitation as to persons who completed the age of 18 years would not apply. Taking a common-sense view of the words used by the Indian Legislature, it seemed to MR. AMEER ALI hardly possible to avoid landing oneself into an absurdity if a prospective meaning were attached to the words "jurisdiction of the Court of Wards." That was his reason for having raised this question If the Council had not the power here to amend matters, a suggestion might be made to the Supreme Legislature for avoiding the difficulty, or some words might be added to section 27 of the Wards Act to effect the same object. It was not, however, for him to make any such suggestion.

BABOO PEARY MOHUN MOOKERJEE said that, although the discussion was at the present moment a sterile one, he wished to remark that the Court of Wards was an institution very different from the English Court of Chancery. Here the institution owed its origin to the solicitude of Government for securing its revenue, but in the case of young men who might possess hundreds of thousands if not millions of rupees in a bank, there was no institution which took care of such persons and prevented their squandering away their property, although it was a property which was much more easily dissipated than landed property. But in the case of minors who possessed property paying revenue to Government, the Court of Wards took care both of the person and the property of the minor. It was no doubt a benevolent institution, but still it was an institution which owed its origin to the desire of Government to see that the revenue due from the estates of minors was secured. He thought therefore that the policy of the law, as enunciated by the hon'ble and learned members opposite, did not hold good with reference to all minors in this country; the case of a minor, however rich he might be, who did not possess landed property, was quite different from that of minors who had such property, and therefore there was no force in the argument based on an analogy between the Court of Chancery in England and the Court of Wards here.

HIS HONOR THE PRESIDENT said that, having regard to the difficulty which was alleged to exist as to the interpretation of the two Acts, he thought the Council was indebted to the hon'ble and learned member for having raised this question and having given an opportunity to the law officers of Government to show, as they had done to HIS HONOR'S entire satisfaction, that no such

difficulty really existed as that which had been suggested. The question seemed to be a very simple one. Part II of the Court of Wards Act described the constitution and the jurisdiction of the Court. With regard to its constitution, the Act said that the Board of Revenue was to be the Court of Wards, and its jurisdiction was declared to extend to the person and property of persons declared to be minors; and a minor was defined to be a person who had not completed the age of 21. The Court of Wards was declared, under section 6 of the Act, to have jurisdiction over all such persons. The meaning of the term "ward" was also to be gathered from the next section of the Act. That section provided that "whenever the sole proprietor of an estate, or all the joint proprietors of an estate, are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction."

If the word "jurisdiction" was to be interpreted, as the learned gentleman had contended, as applying only to persons whose estates had actually been brought under the charge of the Court, then the section would be absolutely meaningless. He thought the Acts were really quite clear, and that there was nothing which could not be reconciled between the Majority Act and the Wards Act.

The motion was then agreed to, and the Bill as amended was passed.

AMENDMENT OF THE BENGAL EXCISE ACT.

On the motion of the Hon'ble Mr. Reynolds, the report of the Select Committee on the Bill to amend "The Bengal Excise Act, 1878," was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee. The second section of the Bill, he said, repealed section 64 of Bengal Act VII of 1878, which had been rendered superfluous by section 9 of the Bill. Section 5 gave power either to prohibit absolutely the possession of certain foreign exciseable articles, or to limit such possession to certain specified quantities. The former alternative had been introduced at the request of the Chief Commissioner of Assam, who represented that he thought it of great importance that he should have the power of preventing the introduction of hill ganja into the province under his administration. By section 7, the words "for sale" were omitted from section 58 of the Act, and certain words were introduced at the end of the section to make it clear that the permission given by section 17 of the Act to possess certain quantities of different exciseable articles was not intended to authorize the introduction, into an excise circle, of spirituous liquors manufactured at another place, even though the quantity introduced might be within the limit allowed under section 17. The alteration in section 10 was of entirely a verbal nature. On going through the Act, it was observed that, as the first clause of section 75 was worded, it might be thought that "the seizure and confiscation" were to be made by the same officer, but no such effect was intended, because the Act distinctly declared that confiscation could only be made after adjudication by a Magistrate.

The President.

The HON'BLE MR. REYNOLDS then moved the following amendment, namely, that section 4 be omitted from the Bill, and the following section be substituted in its place :—

"In the last clause of section 9, for the words, 'and permit the manufacture of such liquors in distilleries established under section 7,' the following shall be substituted :—

"Nothing in this section, or in section 7, shall be held to debar the Collector, with the sanction of the Board, from granting a license for the manufacture of spirituous liquors after native processes in a distillery established under section 7."

It was represented by the Board of Revenue that though the wording of the last clause of section 9 of the Act of 1878 was not very happy, the clause had a meaning which was of such importance that they would prefer the provision remaining in the Act in some form. The Board had already in two instances authorized the manufacture of country spirits in distilleries established under section 7 for working after the European fashion, and though it might not be absolutely necessary that the law should specifically declare that the Board might grant licenses for such a purpose, the Board thought it desirable that the power should be vested in it by law. MR. REYNOLDS therefore moved this amendment.

The amendment was agreed to.

On the motion of the HON'BLE MR. REYNOLDS, the Bill as amended was then passed.

AMENDMENT OF THE CALCUTTA MUNICIPAL CONSOLIDATION ACT.

ON the motion of the HON'BLE KRISTODAS PAL, the report of the Select Committee on the Bill to amend the Calcutta Municipal Consolidation Act, 1876, was taken into consideration in order to the settlement of the clauses of the Bill, and the clauses of the Bill were considered for settlement in the form recommended by the Select Committee.

On the motion of the HON'BLE KRISTODAS PAL the following clause was added to section 13 of the Bill :—

"In the same section, after the word 'rates' the words 'and fees' shall be inserted"

The HON'BLE KRISTODAS PAL said that at the last meeting of the Council he had stated that it had been his misfortune to differ from his hon'ble colleagues in the Select Committee on the subject of the provision relating to the extension of the water-supply to the Suburbs. The section, as framed by the majority of the Committee, went, he thought, beyond the original scope of the Bill, for, when the Bill was introduced, it was not intended to extend the water-supply to other environs of the Town than the Suburbs. But as the section now stood, it gave power to the local Government to extend the water-supply to the environs of the Town without limiting the same to the Suburbs, and the proviso declared :

"Provided that the Commissioners may, with the sanction of the local Government, assess a separate and distinct water-rate upon any portion of the environs, not being more than the maximum rate leviable under the Act. The Commissioners may require the Commissioners of *any* Suburban Municipality to arrange for the assessment and collection of the water-rate within any tract belonging to such Municipality."

Read this proviso in the light of the remarks made by the majority of the Select Committee. They said:

"If the local Government is empowered to declare any portion of the environs to be part of the Town for the purposes of the water-supply, all the legislative sanction necessary will be given. The Government will then be in a position to act as supreme arbitrator between the Calcutta Corporation and the Suburban Municipalities."

Now, reading the two together, one could not resist the conviction that the amended section covered a much wider area than what it was the original intention to embrace. He for one did not believe that the Government did intend to assume such large powers; his impression was that the object of the Government was to limit the operation of the proposed law to the Suburbs only, by giving the inhabitants thereof the benefit of the Calcutta water-supply. If he was correct in this interpretation of the intention of Government, he hoped necessary alterations would be made in the Bill to limit the extension of the supply to the Suburbs only. If the environs of the Town were included, an indefinite and enormous burden would be imposed upon the Town.

With regard to the general question of the extension of the water-supply to the Suburbs, he wished to declare at the outset that he was not in the least opposed to that measure. All that he wanted was that it should be extended upon fair and equitable principles; that the Calcutta Corporation should not be made to suffer any loss for the sake of the advantage which might be conferred on the sister Municipality; that it should be a matter of fair exchange. But if the Council would carefully compare the section as it stood in the amended Bill with the section as it stood in the original Bill, they would find considerable difference between the two. In the amended Bill power was given to the local Government to determine to what portion of the environs of the Town the extension of the water-supply was to be sanctioned. In the original Bill the initiative was left to the Calcutta Corporation. When this amendment was introduced, he was told that this enabling provision had been drawn on the lines of the present Municipal Act, which empowered the Lieutenant-Governor to extend the drainage sections to the Suburbs. He wished it to be understood that there was a material difference between the enabling power given to the local Government under the drainage section, and that given under this section. It was never intended, when the drainage section was inserted in the Calcutta Municipal Act, that the drainage system should be extended to the Suburbs to any large extent. The object was simply to enable the Commissioners to extend the benefits of the Calcutta drainage to persons dwelling on the other side of the Circular Road. That section had been on the Statute Book for nearly eighteen years, and the Government had never thought it necessary to extend it to the Suburbs. But, on the other hand, the Calcutta Commissioners had of their own accord allowed persons, living on the other side of the Circular Road, to connect their houses with the Circular Road sewer. Thus the operation of the drainage section had been very limited, but it was well understood that, under the section proposed in this Bill, a considerable portion of the Suburbs would be brought within the

scheme of the Calcutta water-supply; in fact, the avowed object was to take active measures for the extension of the Calcutta water-supply to the Suburbs. It could not therefore be contended for a moment that the power given under this section would not be largely exercised for years to come. Such being the case, when they saw that the circumstances connected with the two matters under notice were so distinct and different, they ought to consider whether the Calcutta Corporation should not have the initiative, as it would have to bear the money responsibility. It should be borne in mind that this was not simply a question of law, but that it was a question of money. It was not simply a question whether the Government should have the power or not, but it was a question whether the Government should exercise the power if the Suburban Municipality was not in a position to make a fair and full contribution for the benefit they wished to enjoy. BABOO KRISTODAS PAL contended that before the obligation for the extension of the supply was made imperative upon the Calcutta Corporation, that body was entitled to enquire and satisfy itself as to whether there would be a sufficient surplus of water after meeting the wants of the Town for sale to outsiders, and whether the price which the Suburbs might be prepared to pay would cover all costs. Hence, it was necessary that the initiative should be left to the Corporation, who, when necessary, should move the Local Government to bring the provision of the law into operation.

Then, the majority of the Committee admitted that the Suburban Municipality could not afford to pay more than 6 per cent. They said: "But we restrict this to the maximum already allowed by the Act, as that appears to us, on the figures available to us, not only as much as the Suburbs ought to bear, but as much as they can possibly afford to pay." So that the Committee had not considered whether the Suburban Municipality ought to pay more or not, but they thought that they could not afford to pay more than 6 per cent. It was not quite correct to say that there were no figures before them to show whether a 6 per cent. rate would be sufficient or not. The dissent which he thought proper to record gave the figures. But apart from the question whether the Suburbs should pay a higher rate or not, the Select Committee thought that they could not pay more. If that was the conclusion at which the Select Committee had arrived, he did not see with what consistency they recommended that the Calcutta Municipality should be compelled to extend the supply of Calcutta water to the Suburbs. For when power was given to the local Government to declare the Suburbs a part of the Town for purposes of water-supply, the Municipality would have no option but to carry out the orders of Government.

Some discussion took place in Select Committee as to the size of the main. Now, he stated to the Council, when he had the honour of introducing the Bill, that if the Government conceded the reduction of contribution towards the Sinking Fund from 2 to 1 per cent., the difficulties about the 62-inch main would be solved. He said he for one would support the introduction of the 62-inch main; he did declare that, as the Government had been pleased to concede the reduction of the contribution to the Sinking Fund, the

62-inch main should be adopted. It might be a question whether the 62-inch main would be necessary for the purposes of the Town only, or whether it would suffice for both the Town and Suburbs. Individually, he thought that a 42-inch main would double the present supply, but others held that a 62-inch main would be required, as the wants of the Town were rapidly growing, and a 42-inch main would not be sufficient a few years hence. One thing was, however, clear, that if a 62-inch main was required for the Town, then the Town would not be in a position to give water to the Suburbs without the addition of another main. Even if at present the 62-inch main should yield sufficient water for the Town and Suburbs, a few years hence it might be necessary to have another main to meet the growing wants of the Town, and in that case the Town would be put to additional expenditure for increased supply. That was one view of the question. As regards the other view, which he had endeavoured to represent, it was quite clear that if a 42-inch main would double the present supply, the increased size of the main would benefit the Suburbs, and it was but reasonable and just that the Suburbs should pay a portion of the cost of the increased size. From whatever point of view they considered the question of the main, they would find that the cost of the works and the working expenses and other charges would be so large that a maximum 6 per cent. rate recommended would not be sufficient to meet the total cost, and the result would be, as he had endeavoured to show, that the Town would have to make up the deficiency on account of the Suburbs. But, said the majority of the Committee, the Government having conceded a reduction of the contribution towards the Sinking Fund, the Corporation ought to pay the extra cost. Now, he for one could not for a moment admit that, when the Government was pleased to make the concession, it ever made it a condition that the benefit of reducing the contribution should go to make up the deficit of the Suburbs for the extension of the water-supply. The question of the reduction of the contribution towards the Sinking Fund was put upon two grounds—firstly, that the tax-payers of Calcutta were burdened with very heavy taxation; and secondly, that the 2 per cent. contribution fell chiefly upon the present generation of tax-payers, which was not equitable; but the Government never told them that if the contribution was reduced, and the water-supply extended to the Suburbs, the Suburban rate-payers should be relieved of any portion of the cost of the extension of the supply. He would read to them an extract from a letter from the Government of Bengal to the Government of India, recommending the concession of a reduction of the contribution towards the Sinking Fund. It was as follows:—

"The Government of India are aware of the great importance of filling up the numerous filthy tanks which have hitherto been the cause of so much disease in the town; but the completion of this work depends upon the increase in the supply of river water for the use of the people. The Corporation are now considering a scheme for largely increasing the supply of water and extending it to the Suburbs, and the Lieutenant-Governor proposes to amend Act V (B.C.) of 1876, so as to give the Suburban Commissioners power to levy a water-rate to cover the expenses incurred on their behalf by the Calcutta Municipality. The work in contemplation will be of such a nature as to last long beyond the present generation. The drainage works, too, are essentially of a permanent nature, and their

benefits will extend to posterity; on the other hand, there is no ground for apprehending any decline in the prosperity of Calcutta within any period to which reasonable anticipation can extend. Municipal taxation in Calcutta is very high, and the Lieutenant-Governor believes that any increase in the rates would interfere seriously with the progress of the town. Only once during the ten years, 1870 to 1879, did the aggregate rate fall below 16 per cent., and in four of these years it was 18 or 18½ per cent. It is a question whether, even now, the population of the town is not less than it would be if the rate of municipal taxation were lighter In the Suburbs, taxation is also high, and it is represented that, if the rate to be levied is to include provision for a 2 per cent. Sinking Fund contribution, the scheme will probably have to be abandoned. Under these circumstances, the Lieutenant-Governor proposes to make provision in the amending Act for a Sinking Fund contribution of one per cent. only on all public loans raised for water-supply, on the understanding that the Municipal Commissioners of Calcutta determine to lay a 62-inch main conduit from Pultah; and he would make similar provision with regard to loans for drainage works. He trusts that the Government of India will signify their approval of this measure"

Now, there was not one word in the letter to show that, if this concession was made, it would be a sort of set-off against any deficiency in the Municipal funds of the Suburbs on account of water-supply. He submitted that he was quite within the four corners of the Government letter he quoted when he said that, while the Calcutta Corporation should adopt a 62-inch main, it should not be charged with any portion of the cost of the supply to the Suburbs.

Then, he had been told by the Select Committee that the Government had heretofore much assisted the Calcutta Commissioners in carrying out the water-works, and that it had therefore a right to expect that the Commissioners should show some consideration to the Suburbs. He for one readily acknowledged that the Municipality had received assistance from the Government in the prosecution of the water-works; but it seemed to him, and he thought it would be admitted that, as Calcutta was the metropolis of the Empire, there was an inherent obligation on the Government to support the Metropolitan Municipality in carrying out improvements which would make the capital city worthy of the residence of the highest personages in the land He would not raise the question whether in all matters the Government had been liberal to the Municipality, he meant in its financial relations with the Municipality; but while he acknowledged with gratitude the assistance the Municipality had received from the Government in the execution of the water-works, he could not for a moment admit that that assistance was rendered with any stipulation whatever that the Municipality should in its turn extend the water-supply to the Suburbs. If such a condition had been imposed, the Corporation would have considered at the time whether they should have borrowed the money from the Government or gone to the public for the necessary accommodation.

He had been surprised to observe that an impression prevailed in certain quarters that there was jealousy between Calcutta and the Suburbs. He for one denied that any such jealousy existed. The Calcutta Corporation had never hesitated to lend the benefit of its own works to the Suburbs whenever they applied for it. Not many years ago the Suburbs were allowed to discharge their sewage into the Circular Road sewer, and even now the houses lying on the other side of the Circular Road

were allowed to be connected with the sewers; and with regard to water, it was sold to the inhabitants of the Suburbs at a very small charge; indeed, it was notorious that the Suburban people did make use of Calcutta water. The question was, however, whether, taking all these facts into consideration, the circumstances of the Calcutta and Suburban Municipalities were such that they could go together in partnership for the purposes of the water-supply. He saw that in the last annual report of the Suburban Municipality this question was discussed, and the Suburban Commissioners frankly stated that the differences in the condition of the two Municipalities were so great that they could not be fairly yoked together for the purposes of water-supply. He would read an extract from their last administration report. The Suburban Commissioners said—

"Those drawbacks are not sufficiently considered by those who unthinkingly clamour for a water-supply like that of Calcutta, and it is not at all unusual for them to remark: 'They have got water-pipes in Calcutta, why don't we have it in the Suburbs?' It requires very little discrimination, however, to understand that what is practicable in a compact area like the city, consisting of some five square miles of closely built, highly rented valuable properties, and with a large well-to-do rate-paying population, may be financially impracticable in a semi rural suburban township covering four-and-twenty square miles with a scattered and poor population inhabiting property bearing a comparatively low rate of assessment."

The Suburban Commissioners thus distinctly admitted that the differences in the condition of the two Municipalities were such that it was not practicable, financially, to extend the water-supply to the Suburbs. He endeavoured to show in his dissent that a 1 per cent. rate in Calcutta meant Rs. 1,30,000 per annum, whereas a 1 per cent. rate in the Suburbs meant less than Rs. 25,000; so that, practically, it came to this, that a 6 per cent. water-rate in the Suburbs would yield only as much as a 1 per cent. rate in Calcutta. When such was the difference in the condition of the two Municipalities, was not it preposterous to say that the maximum rate which was levied in Calcutta should also be levied in the Suburbs? An equal rate for equal benefit to the Town and Suburbs, he submitted, was a misnomer. Taking all these things into consideration, he proposed the following amendment, namely that the following section be substituted for section 15:—

"15. After section 160, the following section shall be inserted, namely—

"The local Government may (on the application of the Municipal Commissioners of Calcutta) determine what portion, if any, of the Suburbs of the Town shall be included in the said system of water-supply, and may declare the boundaries thereof in the *Calcutta Gazette*, and for the purposes of the water-supply, the land within such boundaries as aforesaid shall be deemed to be part of the Town.

"Provided that the Commissioners may, with the sanction of the local Government, assess a separate and distinct water-rate upon any such portion of the Suburbs, calculated on a scale sufficient to include interest upon all capital expended in the construction of the works necessary for the purpose of extending such water-supply, together with all charges for maintenance, supervision, and renewal of the same. The Commissioners may require the Commissioners of the Suburban Municipality to arrange for the assessment and collection of the water-rate within any tract belonging to such Municipality, and in that case the Suburban Commissioners shall have all the powers of the Commissioners for the purpose of such assessment and collection under the Act."

The Hon'ble Kritodas Pal.

The Hon'ble Mr. Mackenzie said—

"This question of the water-supply has now been under the consideration of the Corporation for over two years, and the multitude of Municipal Counsellors has not as yet, at least so far as I can see, evolved much practical wisdom. They have been discussing it in meeting, and discussing it in Committee; referring it to experts and sitting in judgment on their referees; chaffering with the Suburban Municipality, and disputing with one another; repudiating their Chairman, and promising reports to Government: with all their usual persistence and energy: but somehow we seem to be as far off as ever from any satisfactory settlement. I confess, Sir, that I for one do not altogether wonder at this result, or lack of result. I cannot see how any complete solution of the complex problem involved could ever be arrived at by the discussions of a heterogeneous body of amateurs, such as the Calcutta Commissioners (when dealing with a matter of this kind) really are. Some of them may perhaps object to being classed as amateurs in respect of any portion of their work. The Corporation, no doubt, has on its Board many able men, who give much of their time to doing what is in their judgment best for the town; but unfortunately the determination of important matters is not always left to those best qualified to deal with them. Everybody wants to have a hand in everything that goes on: and it would really appear as though many of the Commissioners claimed, in virtue of their municipal election, to have become honorary but qualified members, not merely of the Institute of Civil Engineers, but also of the College of Physicians, the Society of Actuaries, the Incorporated Law Society, and numerous other similar bodies. There is no professional matter, however petty, or however large, on which these gentlemen do not aspire to guide and instruct, reprove, rebuke, and exhort their responsible advisers. Even the influence and good example of my hon'ble friend, the mover of this amendment, to whom both the Town and the Government owe many debts of gratitude, for much good work and terse business-like speech, has not sufficed to check in some quarters this tendency to waste time in talk. Yet surely of all others this question of the water-supply was one to be determined, not by conflicting votes and party divisions, but by the comprehensive advice of the best professional talent available to Government. What the Municipality might well have done was this. It might have determined in a general way, from its local and special knowledge, wherein the present scheme of water-supply comes short, and to what extent. It might have indicated what were the wants yet remaining to be supplied. It might have settled the amount of money that it was able and willing to spend upon the whole. And, then, it might have invited the Government to assist it by lending the services of its best men to draw up, in consultation with the Municipal Engineer, a complete and well co-ordinated scheme for meeting the wants of the Town. That scheme the Commissioners should have accepted and carried through.

The hon'ble member talks as though there were in existence somewhere a unique and complete scheme, round which all this discussion must centre; and he refers us to the figures embodied in his dissent from the Select Committee's report, as statistics regarding which there can be no possible

doubt. I have gone through all the papers available with considerable care, and I find there no such complete and well-reasoned scheme, as I should have expected at this stage of the Commissioners' deliberations I find only a conflicting farrago of suggestions and alternative schedules of works; nothing like an argued examination of this important and complicated question in all its bearings.

I must trouble the Council with a somewhat lengthy review of the history of this matter, in order to vindicate my contention that the section, as framed by the Select Committee, meets fairly and equitably the true requirements of the case.

Mr. Kimber, the Municipal Engineer, started off in 1878 with a scheme which dealt only with the extension of the filtered water-supply, but provided for the inclusion of the Suburbs. He proposed to raise the daily maximum supply from eight to 20 million gallons, giving four millions of that to the Suburbs. In his report Mr. Kimber remarked—

"The health and prosperity of the Town greatly depend upon the condition in these respects of its Suburbs, and the suburban population must, to a great extent, be considered as inhabitants of the town, carrying on their trades within, though living without it. A portion of this population already obtains its supply, though a too limited one, from the standposts at Hastings, and along the Circular and Baug Bazar Roads" (*i. e. gratis*), "and the people, as a rule, appear well-disposed to pay for the privilege. It is therefore as politic, necessary, and economical a measure to include the Suburbs in the new arrangements, as it would be selfish, churlish, and even suicidal to refuse such a position." I trust that this Council will in the end see its way to saying Amen to Mr. Kimber.

Well, this scheme was deemed too costly for both Town and Suburbs, the total figure amounting to over 59 lakhs of rupees. The annual charge to the Suburbs alone would have been Rs. 1,80,000, requiring a rate of nearly 7½ per cent. to cover it. The Suburbs therefore withdrew from all connection with the matter for the time, and the Calcutta Commissioners on the 17th May 1879 took up the question, and discussed it thenceforward as affecting themselves alone. They appointed a Committee, and this Committee consulted referees—Mr. Bradford Leslie and Mr. Whitfield, than whom no two men better qualified to devise a complete scheme of water-supply could anywhere have been found. But what was referred to these gentlemen was not the general question of the best possible means of meeting all the wants of the Town, but merely a particular modification of Mr. Kimber's scheme of filtered supply (which itself in the main followed the lines of one drawn up some years before by Mr. Leslie himself), supplemented by a further note by Mr. Kimber on the question of extending the unfiltered supply. Mr. Kimber's modified scheme was to cost Rs. 34,70,000. Nothing was said as to the possibility of preventing waste, and economising the use of filtered water generally, and no examination of the advantanges or disadvantages of a complete dual system of supply, filtered and unfiltered, was invited. The reference was, as it seems to me, vitiated by the limitation of its terms.

The Hon'ble Mr. Mackenzie.

The referees made, however, a careful report on the plans actually submitted to them, and the point in their report to which I wish to call special attention is this, that they told the Commissioners that they ought, for the Town alone, to have a 62-inch main. It would, they said, be folly to have any smaller size of conduit, the saving of cost being comparatively trivial. The difference in cost between a 42-inch and a 62-inch main is only about 4 lakhs of rupees—a mere trifle when works of such magnitude are involved, and so many advantages secured by the larger main. A 62-inch main would bring down 28 millions of gallons if required; and the head works and distributaries might be regulated to meet the demand as it grew. The scheme advocated by the referees, carefully confined to the four corners of the reference made to them, provided for raising the Calcutta supply to 12 million gallons, and extending somewhat the unfiltered supply, at a total cost of Rs. 33,44,000.

In the ordinary course of things one would have supposed that the referees' opinion given in December 1879 would have settled the question, as the Commissioners had no other more complete scheme before them, and were not looking for any. But the Calcutta Corporation had to satisfy itself that the referees knew what they were writing about. Every specification had to be subjected to discussion and analysis, time being no object, and the opportunity of studying water-engineering too good to lose. For six months the Committee were pulling the scheme to pieces, and at last the majority of them submitted a fourth schedule of proposed works giving the town 12 million gallons of filtered water and 4 millions of unfiltered at a cost of Rs. 33,48,000, but holding staunchly to the 62-inch main. This was in fact after all only the referees' scheme, slightly tinkered, the difference in cost being only Rs. 4,000, and the supply of water identical.

But the Commissioners are no more to be bound by the majority of their own Committee than by their referees. Dr. Mitra and my hon'ble friend opposite were of opinion that 12 millions of gallons were not nearly adequate to the wants of the place. Dr. Mitra is in possession of much curious information, as to the manners and habits of East and West, and he has come to the conclusion that a Calcutta population wants 50 gallons of water per man daily to make it happy, or say 25,000,000 gallons for 500,000 people, although Manchester with all its trade and a population of 600,000 uses only from 12 to 13 million gallons—waste included. Dr. Mitra tells us, however, that the well-to-do inhabitant here "stretches himself under water," once or twice daily in a bath requiring from 50 to 100 gallons to fill it; while in England "the bulk of the community" only take a sponge-bath once a fortnight, and wash their shirts only at equal intervals. There are certainly differences of habits as there are differences of climate between East and West, but the precise facts stated will no doubt interest the Council. In view of these, and other bits of statistical information, hardly suited for mention here, Dr. Mitra said in effect that he cared nothing for future generations. *They* might find their own tubs. What he wanted was to double the supply of filtered water now available, that all the population might, if it chose, stretch itself in baths daily, and bless the Calcutta Corporation. He thought this might be done with a 42-inch main.

Another member of the Committee was, however, Mr. Bruce, whose opinion on a matter of this kind is worth, at a low computation, that of ten ordinary Commissioners. Mr. Bruce wrote a minute which appears to me to show in a very remarkable way the incompleteness of all the schemes hitherto put forward. He showed that no attempt had been made in Calcutta to check the undoubted and excessive waste of filtered water, and that no sufficient consideration had been given to the question of extending the unfiltered supply throughout the town for all the viler uses of the population. He may have gone too far in saying that no extension of the filtered supply had been shown to be necessary. But his minute demonstrates conclusively that up to date the problem of the Calcutta water-supply had not been worked out in all its possible phases. Government certainly has had no complete report or analysis of alternative schemes in any shape yet laid before it. The Commissioners are still considering and debating, and except from the personal statements of my hon'ble friend, we have no information as to the general bent of their discussions. Indeed, as a matter of fact, the only scheme that has ever been officially communicated to Government is Mr. Kimber's original scheme of 1878, and a note by the late Chairman, Mr. Beverley, which the Commissioners decline to recognise as coming from them.

This sketch of all that has passed, so far as Government is either officially or informally aware, seems to me to afford a simple answer to all the statements regarding the impossibility or impropriety of treating the Town and Suburbs together in the matter of the water-supply. That answer is that the thing has never yet been properly worked out. We do not know how far prevention of waste in Calcutta, and the general extension of the cheap unfiltered supply, might reduce the cost of the works required. We have, as I said before, no authoritative scheme before us upon which we can form a final judgment as to the precise burdens that will actually be imposed upon either Town or Suburbs.

This section of the Bill therefore does not do more than enable Government to exercise, in respect of extensions of the water-supply, the powers which the law already gives it in respect of the drainage scheme. It does not bind the Government down to any particular form of extension. Government has no cognizance at present of any scheme which it is bound to support or push. The Town and the Suburbs must between them hammer out a plan to suit them, if they are not wise enough to refer the whole question to Government in the manner I have already suggested. The hon'ble member has sought to establish some distinction of kind between extensions of drainage and extensions of water-supply. I can see no such distinction. The reason why the question of extending the drainage system has not come up more prominently hitherto is simply because the Town has yet so much to do to complete its internal arrangements.

I cannot conceive, Sir, how any resident of Calcutta can be so short-sighted as to wish to confine such sanitary improvements as this within the limits of the Circular Road. The health of the Town is intimately dependent upon that of the Suburbs. The epidemic fever of Nuddea invades us from

the north. From the south came creeping in only last year the foul and fatal plague of beri-beri. Not once, but often have the officers of the 24-Pergunnahs seen cholera sweeping down upon the town from the villages and marts outside. I myself, when attached to that district years ago, watched more than one such invasion of cholera as it marched from village to village along the principal roads until it fell upon the Town.

Calcutta ought not only to do away with its own vileness, but endeavour to secure a broad and wholesome belt of suburbs round it upon every side. Of course its action must be limited by financial considerations, and no one is more awake than I am to the heavy pressure of taxation in the Town. But in this particular instance, on the showing of the Municipal Commissioners themselves, the *possible* loss to the Town is after all trifling in the extreme. They reckon it, I believe, at an outside figure of Rs. 25,000. But the proof that there must be any loss at all rests, as I shall show, on a very uncertain and insufficient basis. But, however that may be, I submit confidently to this Council that the manner in which the Commissioners have dealt with this question, the interminable delays and discussions in which they seem to be forever losing themselves, are such that Government could not, consistently with its duty, any longer leave the water-supply of the Suburbs entirely to the discretion of the Town Corporation. That body is not bound by anything my hon'ble friend opposite may say, and is quite capable of being very unreasonable in the matter. The Government has delegated certain of its powers and functions to the Corporation. But it cannot, I think, continue to abandon the determination of this important matter to such an independent, dilatory, and, possibly, selfish body. The care of the sanitary interests of the metropolis, as a whole, must, when such large questions are involved, rest to some extent with Government. It must decide where drainage must go and water-supply be carried, and in so doing it will not, we may feel sure, unreasonably sacrifice the interests of either Town or Suburbs. It was in view to getting an equitable settlement of this matter of water-supply that the Lieutenant-Governor, in September 1880, moved the Commissioners not to overlook the Suburbs in their discussions. This was, I maintain, a most legitimate interference, which only finds formal warrant in the section that we are now discussing.

I have said, Sir, that we have no complete scheme before us, but there is sufficient on record to show that the theory that the Suburbs should pay a rate limited only by the demand of the Town is not either necessary or reasonable. The Council will remember that, from February 1879 to September 1880, the town was considering only its own wants, and that its own engineer, its referees, and its Committee all admitted that a 62-inch main was what the Town ought to have, even if the Suburbs were put out of sight altogether. The papers also show that, if the Town *had* a 62-inch main, it could not only supply itself, but, by erecting certain additional engines, filters, and so on, and by extending the distributaries, could supply also a large tract of Suburbs. It would be in the position of a man with a small family and a good cow. He gets the cow for his own use in the first place, and he wisely gets a good one

rather than a scanty milker, and sells the surplus milk to his own profit and the advantage of his neighbours. My hon'ble friend has tried to place us on the horns of a dilemma. I understood him to say that, if the Town got a 62-inch main on its own account, it would be because it required the reserve of power thus secured to it for future extensions of its own population. If it got it because the Suburbs wanted water, the Suburbs ought to pay their share of the cost. The fact, however, seems to be that the Town must have a 62-inch main in any case, and that the quantity of water which such a main can be made to supply, supplemented by unfiltered water, is more than the Town and Suburbs together can want for very many years to come. The future may be left to meet its own wants. This being so, Mr. Beverley, the late Chairman of the Corporation, being a good man of business, and having also a reasonable regard to the well-being of his neighbours, saw that the Town, having its 62-inch main, might supply the Suburbs and make a handsome profit on the operation. He showed that by spending Rs. 10,70,000 more on head-works and distributaries, the Town could give the Suburbs four million gallons daily, and, by then levying an equal water-rate in Town and Suburbs, actually lighten the burden which the Town would have to bear if it stood selfishly aloof, while, if the Suburbs were willing to pay a 6 per cent. rate on the extra outlay, the Town would actually make 10 per cent. on its money. Those figures were, moreover, based on the theory of a 2 per cent. Sinking Fund.

This scheme was forwarded to the Suburban Commissioners for consideration, with, at any rate, the knowledge of the Committee of the Corporation (for they decided to "await the reply of the Suburban Municipality" before taking it up themselves); and it was sent to Government by the Chairman for information, though with the intimation that the Commissioners had not yet accepted it. It was in the letter forwarding that proposal, however, that the Chairman raised, for the first time, the question whether the Sinking Fund contribution might not be lowered to 1 per cent. That suggestion was beyond all doubt made, if not in consequence of, certainly in connection with, the proposed extension to the Suburbs. The Suburban Commissioners at once said they were willing to adopt the proposal of contributing an equal rate, and Government on its side urged the Corporation to send up a definite scheme, promising to take up the Sinking Fund question in connection therewith. But the Commissioners now, as the hon'ble gentleman informed us in Select Committee, repudiate entirely their late Chairman and his scheme, and desire to charge the Suburbs a full share of the cost of the 62-inch main, which originally they meant to have for themselves alone. They accept the reduction of Sinking Fund which Government has given, in the belief that they would make the larger main for the Town alone as the only really permanent style of conduit. But they turn round and tell us that it is not certain they would adopt this style of main if the Suburbs were not to be supplied. Sir, I say nothing is certain in dealing with the Corporation in a matter of this kind. Its Chairman binds it to nothing; its Committees bind it to nothing; its schemes come and go like clouds upon water. It is little else than a manufactory of speeches and an arsenal of delays. We cannot tell yet to what scheme the Corporation

may pin its faith. But there is every reason why we should believe that no scheme, such as Government can, in the general interests of the metropolis, approve, would require the levy of more than a 6 per cent. rate in any part of the Suburbs to which it is proposed to carry the water.

The hon'ble gentleman tells us that no parallel can be drawn between Calcutta and the Suburbs, because Calcutta is a compact town and the Suburbs are scattered over a wide area. No one has yet proposed to carry the water-supply into every jungle and hamlet in the environs of Calcutta. It is proposed simply to extend it to tracts in the immediate vicinity, the circumstances of which are sufficiently like those of the Town to warrant the doing so. It is futile to raise false issues of this kind. Nor are statements of the comparative productiveness of the rates any more to the point. The one question is whether extension is financially warranted *per se*. What is required is the elaboration of a water-supply scheme in which all the conditions of the problem, as affecting both Town and Suburbs, shall be properly examined and worked out

I believe the public would wish to see this done by a Committee of experts appointed by Government, or by Government and the Town conjointly. I am assured by competent authority that the questions of economizing and regulating the filtered supply, and of completing the unfiltered supply, may have a most important bearing on the financial aspects of the case, and that much misapprehension exists as to the cost and merits of the dual system. All these points require thorough working out, and, for myself, I feel bound to say that the experience of the past does not warrant the belief that the task can safely be left to the unaided talents of the Town Commissioners. Be that as it may, this section, as it stands in the Bill, only gives the Government the powers it ought to have in respect of ordering extension in general terms; it compels the Town to follow no particular plan, and it secures to the Corporation what is believed to be in any possible case a reasonable return for any outlay it may incur. Government will not, we may be sure, sanction needless or unduly costly works, or allow the Suburbs to rob the Town any more than the Town the Suburbs. At the same time it may be hoped that the Town will see what its true interests are, and not seek in a matter like this to drive a Jew's bargain with the Suburban Municipality. The hon'ble member denies that the Town feels any jealousy towards the Suburbs in respect of allowing it wholesome water. Let us trust that the Corporation will justify this assertion by their action in the future. They ought, in their own interest, to be not only benevolent, but beneficent, and even generous if generosity be really called for."

The Hon'ble Kristodas Pal in reply said he believed he spoke the sense of the Council when he acknowledged its obligation to the hon'ble member for the elaborate essay on the water-supply of Calcutta with which he had favoured it, and he dared say that the "chattering pies" to whom he had referred in such flattering terms would also acknowledge their obligation to him. It was not his vocation to defend the Municipal Commissioners of Calcutta here; he must confine himself to the provisions of the Bill before the

Council, but as his hon'ble friend had been pleased to call the Commissioners a body of "heterogeneous amateurs," because they ventured to talk on such an engineering question as the water-supply extension, he (BABOO KRISTODAS PAL) supposed that the views and opinions advanced by him on the subject did not emanate from an "amateur." The hon'ble member had given the Council a detailed analysis of the different schemes laid before the Commissioners for the extension of the water-supply. He would not trouble the Council with a review of that analysis, but the facts which the hon'ble gentleman had so carefully noted showed that the Commissioners had not been idle, and that, as the question involved a very large outlay, the Commissioners were bound in duty and in justice to the rate-payers to give the matter their maturest consideration. He was sure that the question would long ere this have been settled if the extension of the supply to the Suburbs had not been mooted by the Government. The original scheme included the extension of the supply to the Suburbs, but that scheme was abandoned, because the Suburban Municipality acknowledged their inability to bear the cost. The question had, however, been again raised and pressed upon the Commissioners by the Government, and the Commissioners felt themselves bound to consider the proposals of Government, hence the delay of which his hon'ble friend so bitterly complained. He had also spoken of the dual system, and other points in regard to which BABOO KRISTODAS PAL would not take up the time of the Council. The question of the dual system involved important details which the Council was not in a position to discuss, but he did not doubt that the views which had just been advanced would be duly taken into consideration by the "amateurs" to whom his hon'ble friend had so kindly referred. He readily admitted that the sanitary interests of the Town were intimately bound up not only with those of the immediate Suburbs, but also of the villages round about. As his hon'ble friend had himself shown, cholera had been known to extend to the Town step by step from villages in the 24-Pergunnahs, and, in order to protect itself, Calcutta ought certainly to be ahead; but he wished that the treasury of the Calcutta Municipality had been rich enough to meet the many obligations which the extended views of his hon'ble friend would impose upon the Town. There was a phrase used in the last budget minute of the Hon'ble the Finance Minister, of which BABOO KRISTODAS PAL was here reminded; he meant the very significant words "coercive philanthropy." He could not but say that if the Calcutta Municipality were to be burdened with any portion of the cost of the extension of the water-supply to the Suburbs or other environs on the ground that the Town was in a better position to pay, it would be a species of "coercive philanthropy" which the rate-payers of Calcutta could not be expected to appreciate. His friend had told them that it was not intended to extend the supply to all parts of the Suburbs; that only such parts of the Suburbs would be included as might be said to run on all fours with Calcutta. If these parts of the Suburbs did really run on all fours with Calcutta, there would have been no difficulty at all; but what was the fact? Taking the best parts of the Suburbs, he found that the financial results of taxation in Calcutta and the Suburbs were

widely different. While a one per cent. rate in Calcutta yielded Rs. 1,30,000 per annum, even in the best parts of the Suburbs, which were proposed to be included in the water-supply scheme, a one per cent. rate would yield annually only Rs. 24,000, and while this vast disparity existed between the material condition of Calcutta and that of the Suburbs, BABOO KRISTODAS PAL contended that it was not reasonable to speak of equality between the two places. And, lastly, his hon'ble friend said that properly speaking there was no definite scheme before the Commissioners; if this was really the case, BABOO KRISTODAS PAL did not understand with what consistency it was proposed to fix the water-rate for the Suburbs definitively.

HIS HONOR THE PRESIDENT said that before putting the question he should like to allude very briefly to his hon'ble friend's main argument. There seemed to be a wish to make the Council believe, and HIS HONOR supposed from what had passed elsewhere, to make the public believe also that the Government was endeavouring to force on the rate-payers of Calcutta the liability of providing water at the expense of Calcutta to the Suburbs. HIS HONOR had no hesitation in saying that there was not the shadow of foundation for this inference. He had seen this statement made very frequently by members of the Corporation at their meetings, but they had nothing whatever before them to warrant that assertion. He had spoken of the advantages which the Corporation had received from the Government, and their obligation to look with consideration on the Suburbs, not with a desire to ask for their charity on behalf of the Suburban population; but he had mentioned the assistance given by Government as a reason why the Calcutta Corporation were now in a position to look at the claims of the residents of the Suburbs in a broad and liberal spirit.

So far from the extension of the water-supply throwing any additional burthen on the Town, the evidence, such as it was, was quite the other way. Although it was quite true, as the hon'ble member on the right (Mr. Mackenzie) had said, that, although the question had been under the consideration of the Corporation for years, no definite and intelligible scheme had been finally determined on, yet whatever schemes had been drawn up and prepared by the Corporation's own officers had all shown that a supply of water might be given to the Suburbs not only with no loss to the Corporation, but with a considerable reduction in the water-rate levied in the Town.

There was not the shadow of a doubt that the extension of the water-supply to the Suburbs would not throw any increased liability on the Town, and HIS HONOR could not do better than refer to a paper drawn up by the Chairman of the Municipality, which was prepared by him in consultation with the Municipal Engineer, and laid before the Corporation. After considering all the schemes, imperfect as they were, which were before them, the Chairman pointed out the commercial advantage to the Town of extending the works to the Suburbs. He said—

"It is notorious that a large concern can often be worked more economically than a small one; and the remark applies with greater or less force to the Calcutta water-works. Take for example the proposed new main conduit. It has been shown that a 62-inch

conduit will in the long run be far more economical than a 42-inch conduit; the larger main will convey 20 million gallons daily, the smaller main 8 million gallons only; yet the cost of the larger is only 17 lakhs against 13 lakhs for the smaller. Even were the smaller main adopted, it is clear that it would be more economical that the whole available supply furnished by it, namely 8 million gallons, should be fully utilized than that the conduit should be used to bring down 4 million gallons only. So with other works and charges for establishment and general superintendence.

"The main question then is—would it be profitable to the Town to extend its water-works into the Suburbs, on the understanding that the same rates were levied in the Suburbs that are levied in the Town? The Engineer has worked out this problem, and the answer seems to be in the affirmative. Mr. Kimber has worked upon the basis of the scheme set forth in the Committee's first report. That scheme, it will be remembered, provided for an increase of 4,000,000 gallons to the Town's daily supply of filtered water, besides increasing the supply of unfiltered water (for roads and latrines) from about 1,200,000 to 4,000,000 gallons."

The Chairman then went on to show at considerable length, and he showed conclusively, that it would not only pay, but would yield a very considerable profit to the Municipality on the extra outlay required, and yet the Council was told that there was an intention on the part of the Government to impose an additional burden on the Town for the benefit of the Suburbs. It was quite true that there were no absolutely reliable figures to go upon, as the Municipality had hitherto neglected to determine, as he said before, what schemes they would elect; but all the figures there were, and it might be understood that these figures, drawn up by the Municipal officers, were not likely to take an unduly lenient view of the position of the Suburbs, showed plainly, as far as they showed anything, that there was not the slightest ground for saying that there would be any extra burden thrown on the Town; but, on the contrary, the extension of the works to the Suburbs would bring considerable relief to the Town. They had been told that it was very wrong for the Government to interfere with the Calcutta Corporation in the matter of this water-supply, and that it was the general wish of the inhabitants that such questions should be left in the hands of the Municipality. Whatever might be the opinion of the Municipality themselves, he hardly believed that this was the view of the public at large any way. His Honor thought that, if the public had an opportunity of seeing how little had been done in a very long time, they would consider that it was quite time for the Government to interfere and put pressure on the Municipality to get the question settled one way or the other. Objection had been taken to the assertion that the Calcutta Municipality had shown a certain amount of jealousy in assenting to extend to the Suburbs the advantages of a good water-supply which they themselves enjoyed. His Honor might mention as a proof of this that a small scheme had been prepared by the Municipal Engineer for relieving the Municipality of the consumption of a good deal of their filtered water by substituting unfiltered water for certain purposes. The actual cost of that scheme out of pocket was about two and a half lakhs, and the effect of it would be to give the Municipality an unfiltered supply to the extent of four millions of gallons daily, for purposes for which unfiltered water would answer, in the place of 1,200,000 gallons which the Town had at present. This would set free for drinking purposes an equal amount of good filtered water. This

scheme had been before the Municipality for over a year certainly, and nothing whatever had been yet done in regard to it. It remained just where it was, and although one would think the matter could have been settled in a fortnight, it had gone lingering and lingering on, and had since been shelved simply because the Commissioners could not agree upon such a simple and obvious question as that. How could it possibly be said that no jealousy was shown towards the Suburbs by the Calcutta Municipality, when it was seen that they would rather work their latrines and filth depôts with filtered water, than use the unfiltered supply to make a supply available for the Suburbs of good filtered water. With a small outlay of less than three lakhs the whole thing would be done, and the water required for the Suburbs made available; but because they were urged to take up in earnest and with intelligence such a plain matter as this, the Council were told that the Government was endeavouring to overburden the Municipality for the benefit of the Suburbs. A great deal had been said about the extent of the Suburbs, and pictures had been drawn of distant isolated hamlets receiving a supply of water at the expense of the people of Calcutta; but the hon'ble member must be perfectly well aware that the plan proposed was to supply water to certain definite thickly-populated streets and tracts in only those portions of the Suburbs which were near to Calcutta. The whole of the papers showed that the Corporation knew perfectly well what was intended, and that the districts in question had been actually surveyed and valued. The hon'ble member had said that the Government was bound to look upon Calcutta as the metropolis of the Empire, and that that was a sufficient answer to the argument that, as Government had helped the Town, therefore the Town should help the Suburbs; but His Honor in such a matter could not draw such a distinction. He saw no reason why one side of a road was to be favoured because it fell within the metropolis, while the other side was shut out of all advantages. The Suburbs were to all intents and purposes a part of the metropolis, and he could not see why we should treat rate-payers, for instance at the end of Chowringhee, with special consideration, and show none to the houses a few yards off where resided a great number of respectable Pleaders of the High Court, simply because there was an imaginary line drawn at one end of that street. His Honor must say that he thought the whole of this opposition most unreasonable. As far as he was concerned, if this Act was passed, both Calcutta and the Suburbs would be fully consulted, and their interests equally guarded, and he could assure the Council that there was no desire to do anything to the disadvantage of either Calcutta or the Suburbs.

The Hon'ble Kristodas Pal's motion was then put and negatived.

The Hon'ble Kristodas Pal then moved that in section 15 the word "suburbs" be substituted for the word "environs," and the words "the Suburban Municipality" for the words "any Suburban Municipality."

The Hon'ble Mr. Mackenzie observed that he saw no necessity for the amendment. The section followed the lines of section 168 of the Act relating to drainage. This was intended to be merely an enabling section, and as there was no definition of "suburbs" in the Act, there would be no real difference between the signification of the words "suburbs" and "environs."

The HON'BLE THE ADVOCATE-GENERAL said he thought, after what had fallen from His Honor the President showing that there was no difference between the environs at one end of the Town or the other, legislation on the subject should not be partial in any one direction, but should be as wide as possible, the intention being to enable the Government to extend the provisions of the Act relating to water-supply to any Suburban Municipality the Government might think fit.

The HON'BLE PEARY MOHUN MOOKERJEE pointed out that the word "suburbs" had been defined in Act XXI of 1857, and in several Acts of the Council where the word "suburbs" had been used, reference had been made to the definition in Act XXI of 1857, as distinguishing the Suburbs from the station of Howrah.

HIS HONOR THE PRESIDENT remarked that the Government was taking power to extend the water-supply to places which could afford to pay for the extension. It was well-known that the Government had no intention whatever to extend the water-supply to Howrah, but the object of the provision was to enable the Government to have extensions made wherever it was fit and proper to do so. It was quite possible that the outlying stations of Chitpore and Cossipore might some time hence be in a position to need a water-supply, and the Commissioners themselves might wish to supply those places with water from the pipes which ran alongside. Why should the hands of the Government and the Municipality be tied up so as to prevent such desirable extensions? This was a purely permissive provision, and he thought the Council might rely on the Government doing nothing that might be unfair towards the Calcutta Municipality.

The motion was then put and negatived.

The HON'BLE KRISTODAS PAL moved that the following be substituted for clause 1 of section 16 of the Bill:—

Introduction of new section after section 162

"16. After section 162, the following section shall be inserted, namely:—

Contribution towards pensions of Police officers.

"162A. The Police Budget may, if the local Government, with the previous sanction of the Governor-General in Council, shall so direct, include a charge for pensions payable under the orders and rules of Government to all officers and servants on whose behalf provision for the payment of salary has ordinarily been made in such budget, and who may retire from service after the commencement of this Act; such charge shall be payable by the Commissioners, but shall not exceed three-fourths of the total of such pensions."

He was not in a position to say whether any orders had been received from the Government of India in reply to the representation which had been made on this subject by His Honor the Lieutenant-Governor, but if BABOO KRISTODAS PAL had the option, he would move the entire omission of this provision in conformity with what fell from the President on a former occasion. But as the Council was not in a position to accept such a motion, he would move the amendment which stood in his name. The Commissioners were of opinion that a ten per cent. contribution towards pensions would saddle them with a higher proportion of payment than they ought in equity to bear, and they thought it would be fair and equitable if they were to pay only three-fourths of the pensions of such officers as might retire after the passing

of the Act. He might mention that a ten per cent. contribution would amount to a payment of about Rs. 17,000 per annum, and he found that the pensions of officers who had retired within the last ten years amounted to about Rs. 16,000 per annum; so that a ten per cent. contribution would practically cover the pensions of officers who had retired during the last ten years, and thus relieve the Government of that charge altogether. As that was not the intention of Government he submitted his amendment for the consideration of the Council.

The HON'BLE MR COCKERELL said he thought there was no objection to the amendment which had been proposed. When the services of officers of Government were made over to foreign States or for employment on wards' estates, a contribution of 20 per cent. was made both for furlough and pensions; in the present case contribution on account of furlough was not included, and it was calculated that 13 per cent. on gross salaries would cover pensions; but as the Government paid one-fourth of these salaries and the Municipality three-fourths, a ten per cent. contribution on aggregate salaries would, it was thought, be a fair contribution from the Municipality on account of pensions. As the Commissioners, however, preferred to pay three-fourths of the actual sum paid towards pensions, he thought there would be no objection to accept the proposal. MR. COCKERELL believed the result would be that the Municipality would pay less now and more hereafter. In all pensionary matters the ordinary rule was, and he thought it the equitable one, that pensionary allowances should come from the same source as pay, and that the charge should be divided between the Municipal and Government funds in the same proportion that the pay itself was divided.

The HON'BLE MR. MACKENZIE remarked that he did not see any objection to accept the section now proposed, excepting that it would probably be worse for the Municipality in the long run to pay three-fourths of actual pensions than to pay a contribution of ten per cent. on aggregate salaries. The contribution of ten per cent. had been fixed on actuarial principles, such as satisfied the Government of India in regulating its liabilities for the pensions of servants lent to foreign States and bodies, and a proportionate deduction had been made on account of the contribution of one-fourth now given by Government towards the charges in the Police budget. The Municipal Commissioners had, however, their own way of calculating and preferred their own figures. He might perhaps give one example to illustrate the effect of adopting the amendment. There were some of the higher paid members of the Police Force who would probably retire in the course of a year or two, and these would draw substantial pensions. Under the provision, as it stood in the Bill, the Municipality would only have had to pay ten per cent. on their salaries up to the date of their retirement and nothing more, but they would now have to pay three-fourths of their pensions so long as these officers lived. He observed in the reports of the Municipal meeting, held with reference to the Bill, that there was much misconception as to the meaning and bearing of the section as it stood. It was for instance entirely erroneous to say that it was proposed that the Municipality "should make payments towards pensions which were already being paid." The section provided for a

levy of ten per cent. on *salaries*, and no charge could therefore be made on account of men drawing not salaries, but pensions. He thought the Commissioners were hasty in putting forward their amendment, but it was their own doing entirely. There was another matter as to which he thought it right to enter a sort of *caveat*. The Government now paid one-fourth of the charges on account of the police, but that payment was made not as a matter of legal liability, but as a matter of grace. There was nothing in the Act as it now stood to bind the Government to pay any portion whatever of the charges contained in the Police budget, and though it might accept the proposal to pay one-fourth of pensions under the proposed amendment, this was not to be construed into binding it for ever to pay one-fourth of the salaries of police officers. The proposal to pay three-fourths of the aggregate amount of pensions came from the Commissioners, but the Government was perfectly willing to accept the amendment. The wording of the last clause of the section should be slightly modified to meet the change in the first.

The motion was then put, and after verbal changes the amended section was agreed to.

The Hon'ble Kristodas Pal moved that the following clause be inserted at the end of section 23 of the Bill:—

"Nothing in this section contained shall be construed to apply to the sale of drugs used by practitioners of indigenous medicine, whether these are recognized by the British Pharmacopœia or not; when such drugs are not sold in a shop or place where medicines recognized by such Pharmacopœia are dispensed upon prescription."

The Hon'ble Peary Mohun Mookerjee said he thought the objection taken to section 23 was well-founded. The section as it stood would not only put an unnecessary restraint on the sale of native drugs, and the preparation of Hindu medicines, but it would also give rise to this anomaly that, while unregistered shop-keepers would be prevented from selling such simple articles as soda and borax, they would be at liberty to sell such highly poisonous drugs as cobra poison, rasakurpura, a compound of the chloride and the perchloride of mercury, and orpiment, a natural compound of arsenic and sulphur which were not recognized by the British Pharmacopœia. The common ground which several articles occupy both as medicinal drugs and articles of ordinary and domestic consumption has made legislation on the subject of drugs a matter of great difficulty. Even in England, where only one system of medicine prevailed, the difficulty was far greater here where several systems of medicine obtained. Baboo Peary Mohun Mookerjee feared also that certificated compounders trained in the European system would be ill-qualified to dispense native drugs of the nature and properties of which they knew nothing. On these grounds he would support the amendment.

The Hon'ble Ameer Ali observed that the proceedings in the Coroner's Court showed that poisonous drugs were constantly being sold for medicinal purposes and this caused much mischief. He would suggest the insertion of the word "non-poisonous" before the word "drugs."

The Hon'ble Mr. Mackenzie said the question of the sale of poisons had repeatedly come before the Government, but it had been found very

difficult to deal with the subject. There was no doubt that many of these drugs, like many European drugs, were poisonous when used in large quantities. But at present he thought it was much better not to interfere with shops where drugs were sold and dispensed according to the native fashion, and to confine the operation of the Bill to places where medicines were dispensed after the European method. The hope was that gradually people would learn to go to the shops where they were safe, and in time it might be possible to do away with unlicensed drug shops of all kinds.

His Honor the President remarked that the question of the sale of poisonous drugs had been discussed by the Government of India and all the local Governments, and the conclusion had been generally come to that it would not be safe to legislate on the subject.

The Hon'ble Ameer Ali withdrew his amendment, and the original motion was then agreed to.

On the motion of the Hon'ble Kristodas Pal, the following section was substituted for section 24 of the Bill—

"24. For the first clause of section 296, the following clause shall be substituted, namely:—

"The Commissioners, or any person authorized by them in that behalf, may at all reasonable times enter into and inspect any place kept for the sale of drugs, or in which drugs are sold, and if they have reason to suspect that any drug in the said place is adulterated, or by reason of age or the effect of climate has become inert or unwholesome, or has otherwise become deteriorated in such a manner as to lessen its efficacy, to change its operation or to render it noxious, may remove the same on giving a receipt specifying the nature and quantity of the drug removed and its approximate value; and if it appear to a Justice of the Peace that the said drug removed as aforesaid is adulterated, or has become inert, unwholesome, or deteriorated as aforesaid, he may order the same to be destroyed or to be so disposed of as to him may seem fit. If it shall appear to the said Justice that the drug so removed is not adulterated, or has not become inert, unwholesome, or deteriorated as aforesaid, the person from whose shop or place it has been taken shall be entitled to have it restored to him, and it shall be in the discretion of the said Justice to award him such compensation, not exceeding the actual loss which has been sustained, as such Justice may think proper."

Inspection of drugs.

Compensation if drug be not adulterated, &c.

The Hon'ble Kristodas Pal moved that the following section be substituted for section 26 of the Bill :—

"26. After section 310, the following section shall be inserted, namely :—

"310A. The Commissioners shall from time to time grant licenses to persons applying for such, for the sale, at burning grounds, of fuel and other articles used for the cremation of dead bodies, and shall in meeting, other than an ordinary meeting, prescribe a scale of rates for the sale of such articles; and any person not so licensed, who shall within three hundred yards of any such burning ground sell or offer for sale any such fuel or other articles, shall be liable to a fine not exceeding fifty rupees.

"The Commissioners may on good and sufficient reason revoke or withdraw any such license they may think fit, and any person to whom any such license is granted, who shall charge for the sale of any such article any higher rate than the rate fixed for such article in

Introduction of new section after section 310

Power to license fuel shops at burning grounds

such scale, shall, at the discretion of the Commissioners, be liable to have his license cancelled, and shall also be liable to a fine not exceeding ten rupees.

"The Commissioners shall not be bound to grant a fresh license to any person whose license may have been revoked, withdrawn, or cancelled, under the provisions of this section."

He said the object of this amended section was to encourage competition, and to enable the Commissioners to prescribe a fixed scale of rates for the sale of fuel and other articles used for the cremation of dead bodies. If the Commissioners had power to regulate the rates, all that was wanted would be attained. He need not repeat the circumstances which led to the introduction of this section in the Bill. There had been great scandals in connection with the sale of fuel and other articles at the burning-ghats, and it was therefore deemed necessary to license vendors and to regulate their charges. But as a fixed scale of rates for the sale of fuel had not the sanction of law, the proposed section would give that sanction.

The motion was agreed to.

On the motion of the Hon'ble Kristodas Pal the Bill was then passed.

The Council was adjourned *sine die*.

Reg No. 1829G.—200—25-5 81


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